THE RIGHT TO PETITION IN UZBEKISTAN, RUSSIA, GERMANY, THE UNITED KINGDOM, THE UNITED STATES, AND AUSTRALIA: A COMPARATIVE ANALYSIS

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UNDP's Rule of Law Partnership in Uzbekistan Project (ROLP)

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EXECUTIVE SUMMARY

1. The right to petition one's government for redress of grievances is the right to make a complaint or request of government without fear of punishment or reprisals. This right has been enshrined in law for decades.

2. In November 2014, the Republic of Uzbekistan enacted the law, "On Petition of Physical Bodies and Legal Entities" (hereinafter "Petitions Law"), giving individuals and legal entities the right to petition state authorities in the form of statements, proposals, and complaints. The purpose of the law is to *regulate* the petitioning process as it is implemented by government authorities, including the courts.

3. In October 2015, the United Nations Development Program's Rule of Law Partnership in Uzbekistan Project (ROLP) requested that an evaluation and comparative analysis be conducted of the Uzbek law and provisions compared to those of five other countries for the exercise, management, and organization of citizen petitioning. The objective of this study is to help ROLP, its partner the Supreme Court of the Republic of Uzbekistan and, as appropriate, other justice sector stakeholders to gain a better understanding of the different petition systems and to identify good international practices that might serve as models or references for Uzbekistan's effective implementation of the law. This is a summary of the full report of that evaluation and comparative analysis conducted by Ingo Keilitz,[1] an independent international consultant, from mid-October to early December 2015.

4. The central question addressed by the study is who, how, and by what processes, mechanisms, capacities and organizational infrastructures should the courts and justices system of Republic of Uzbekistan respond to petitions in compliance with the Petitions Law. The overarching answer to this central question is fundamental conclusion and recommendation drawn from the study:

> The right to petition the governments in Germany, the United Kingdom, and Australia is clearly understood as part of the governments' traditional parliamentary or legislative

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oversight and control functions. The government entities responsible for receiving and responding to petitions are part of the parliament or the legislature in these countries. Even in the United States, where the administration of petitions is handled by non-governmental entities, the remedies sought are typically actions of the legislative branch. There is no precedence in these countries for courts or other judicial branch entities to assume direct responsibility for the administration of petitions. Justice institutions, much like ministries and departments in the executive branch such as education, health, and welfare, routinely will be called upon to assist in the responses to petitions. However, petitions lodging grievances about courts or the judicial process are relatively rare. *Therefore, ROLP, the Supreme Court, and other stakeholders are well advised to exercise caution before placing the justice system into the position of the central responsibility for implementing the right to petition provided in the Petitions Law.* As discussed in the text of the full report, doing so is likely to be fraught with conceptual, organizational, and operational difficulties for which there is little or no guidance in international practice.

5. *With that caution given due consideration and deliberation, ROLP, its partner the Supreme Court, and other justice sector stakeholders seeking to implement the Petitions Law should consider the petition systems in Scotland, Germany, and Australia as sound models and references of good international practices.* There is much to like in the Scottish and German e-petition systems. The systems meet the aims and broad goals of transparency, equality and inclusion (access), engagement of citizens and legal entities in public affairs, consideration and discussion of submitted petitions, and information about and accountability for government responses. Although not a full-fledged e-petition system, the Australian system, too, has much to admire in its simplicity, openness and transparency. The Scottish, German, and Australian systems seem to work and, generally, work well. Their shortcomings are evident and are pointed out in this report or in references (e.g., Germany's e-petition system and conventional system are not well integrated).

6. The full report of the study includes overviews, analysis, and comparisons of similarities and differences in the laws and provisions for petitioning in Uzbekistan and in the five comparison countries -- Russia, Germany, the United Kingdom (England and Scotland), the United States, and Australia -- highlighting their salient characteristics and pointing out critical differences that might be of particular relevance for Uzbekistan. The evaluation and comparative analysis of the laws and provision of the right to petition reveals two perspectives of the petition systems in the countries studied, one general, brief, and high level, the other

specific and detailed. The first -- independent of the analysis commissioned by ROLP and presented here – comes from an index of the World Justice Project, the *WJP Rule of Law Index™* and compares the right to petition in Uzbekistan against that in Russia, Germany, the United Kingdom, the United States, and Australia. The index focuses on "the right to petition and public participation," a sub-factor of the World Justice Project's *WJP Rule of Law Index*™, one of four sub-factors open government." The World Justice Project 2012 and 2014 datasets presents sub-factor scores for about 100 countries, where "1" signifies the highest score and "0" the lowest. *The scores for the six countries fall clearly into two distinct clusters, with Uzbekistan and Russia, both with a scores of 0.33 in 2012 and 0.28 in 2014, in one cluster, and Germany (0.72 in 2012 and 0.72 in 2014), United Kingdom (0.78 and 0.74), the United States (0.78 and 0.71), and Australia (.81 and 0.80) falling into the other cluster.* These scores place Germany, the United Kingdom, the United States, and Australia among the higher ranked, and Uzbekistan and Russia among the lower ranked countries in the world "on the right to petition and public participation."

7. The second detailed perspective of the petition systems studied is based on the ROLP-commissioned analysis by the Independent Consultant and constitutes the bulk of the evaluation and comparative analysis discussed in the full report. The comparative analysis compared the five countries on the dimensions and factors identified as relevant to the goals and objectives of the right to petition including: (1) the governance and regulatory control by government; (2) the availability of e-petitioning; (3) the reviewing entity responsible for considering petitions; (4) whether the review of the petition is mandatory, voluntary or discretionary; (5) provisions for supporting signatories; (6) the openness and transparency of the petitioning process; (7) specified timeframes for the petitioning process; and (8) monitoring and evaluation of the petitioning process.

8. Based on the comparative analysis, this report draws a number of conclusions in addition to the two fundamental conclusions highlighted in Paragraph 4 and 5 above, and makes several recommendations for ROLP, its partner, the Supreme Court of the Republic of Uzbekistan and, as appropriate, other justice sector stakeholders. First, the historic right to petition has remained unchanged for centuries until the last two decades spurred by the Internet and related advances in information technology. *As a basic principle, every effort should be made to ensure that all functions of the petition process are provided both by electronic means and conventional means yet handling every petition by the same basic procedural rules. In today's world, however, it makes much sense to make e-petition the primary form of petitioning.* It seems inevitable that e-petition systems that can accommodate high

volumes and the many demands of effective systems related to transparency of the systems to public view and scrutiny, are the way of the future. Cost alone would make e-petition systems attractive. ROLP, its major partner, the Supreme Court, and other justice system partners are well-advised to develop an e-petition system for use as the rule, accommodating conventional written or oral appeals only as the exception, as when petitioners cannot or chose not to use an e-petition. In such cases, those responsible for receiving petitions will either help the individuals compose an e-petition or translate written or oral petitions for them.

Second, e-petition systems have many more functionalities when compared to conventional written or oral petitioning including the ability to submit petitions by e-form on the responsible government body's website, easily allowing citizens to study petitions online and express their support for a petition (by adding their signature), even after the petition has been submitted to Parliament, as is today the case in Germany (for "Public Petitions"), and other functionalities described in the previous section of this report. The e-petition system expands the possible exercise of the right to petition, potentially reaching out to citizens who may otherwise be less inclined to institutional political participation, especially younger people, contributing to more "participation" and involvement in the political process generally.

Third, at the outset and before the ROLP, its partner the Supreme Court of the Republic of Uzbekistan, and other justice sector stakeholders actually embark on the implementation of the Petitions Law they would be well served by addressing a number threshold governance issues, perhaps guided by the consideration of contrasting petition systems of the United States and Russia – referred to as a "minimal approach" and a "broad-based approach" to the governance of the petition systems. These threshold issues relate to such fundamental questions as: (a) Should the scope of the right to petition or appeal be understood in terms of the entity – the parliaments or legislatures, the executive, or the judiciary -- to which petitions and appeals of citizens are addressed? (b) Should the petitioning system be understood as part of the governments' legislative oversight and control functions as the right is understood in most parts of the world? (c) Will a petition process in the Judiciary align or conflict with the traditional functions of courts as prescribed by law?

9. Based on these conclusions, the report makes six recommendations. The first and last recommendations are "bookends," representing the central practical issue (What should a petition system should look like?) and the fundamental issue of governance (In what government entity, exercising its legitimate and appropriate authority, should the petition process reside?) The four recommendation in between are specific recommendations that are

meant to be suggestive of the strategies the ROLP, the Supreme Court, and other stakeholders might consider in developing the petition system in Uzbekistan. The last recommendation encourages early deliberation of fundamental threshold questions and issues. In what government entity, exercising its legitimate authority, should the Uzbekistan petition system be centered? This is the fundamental and threshold question that should be addressed by ROLP, its partner the Supreme Court of the Republic of Uzbekistan, and other stakeholders, as appropriate in a series of hearings, conferences, and other deliberations.

Recommendation 1: Develop e-petition system. The Supreme Court should, in partnership with ROLP, and other stakeholder in Uzbekistan, including actors in private and nonprofit sector, develop an e-petition system adapting the best functions of the systems in Germany, Scotland, and Australia. The system should be fully automated from the submission of petitions via online "e-form" or email, to the automated registry and of received e-petitions in real (or near-real) time accessible to petitioners and the public, to the collection and posting of supporting signatures, to online updated information about interim decisions made as well as the status in the petition process, to online discussion forums, to final decisions made about the petition and the response of the government.

Recommendation 2: Rigorous assessment of current volume and flow of petitions. What is the volume of petitions already receive? What is their nature? To what government body and function are they directed? In what manner? What is the current frequency of petitions? How many signatories are supporting petitions? These are questions that should be answered by a thorough assessment of the current volume and flow of petitions.

Recommendation 3: Information about the petitioning process made available on official websites. Article 8 of the Petitions Law requires that information about the petitioning process be communicated to interested parties by making the information available on "official websites" of state bodies and by other means. This should be done as soon as possible, perhaps starting with a user-friendly online brochure such as that available in Germany or the video posted on the Australian website.

Recommendation 4: Formulate functional requirements for software development for the e-petition system. For every part of the automated system, from submission of

petition to final responses to them, and for every step in between, the ROLP, the Supreme Court, and other partners should identify the functional requirements of the desired e-petition system.

Recommendation 5: Start small and scale up over time. E-petition systems around the world are still in their infancy. The ROLP, the Supreme Court, and other partners are encouraged to start building the e-petition system at a small scale, manageable for making adjustments, and build the system out in terms of size, functionalities and geography over time.

Recommendation 6: Early deliberation of threshold questions and issues. In what government entity, exercising its legitimate authority, should the Uzbekistan petition system be centered? This is the fundamental and threshold question that should be addressed by ROLP, its partner the Supreme Court of the Republic of Uzbekistan, and other stakeholders, as appropriate in a series of hearings, conferences, and other deliberations. This report should be made available to participants in these gatherings as part of the background reference materials. It should help start and shape the debate, not direct its outcome.

10. The last section of the report identifies opportunities and risks defined as threats to the success of an organization (the ROLP, its partner the Supreme Court, and other stakeholders) as a result of a social or economic development (the implementation of the Petitions Law as envisioned by the conclusions and recommendations of this report). Threats include not fully realizing opportunities that may contribute to success. Two related opportunities are identified. The first is one of attitude, perception and mental model. The second is innovation. One may easily consider the implementation of the Petitions law as an arduous and stifling task of bureaucratic compliance, i.e., a "problem" that needs fixing. This view would be a mistake of missing opportunities. Instead, the Supreme Court and its stakeholders should view the "problem" of implementation not as a problem per se but rather as a creative opportunity to make the courts in Uzbekistan more transparent, open, and accessible. They should view it as invitation to innovate, to aspire to such lofty goals as improved public access to and trust in Uzbekistan's civil court system, and increased court responsiveness to citizen feedback on civil justice administration through the development of institutional mechanisms for public awareness raising. Five risks that should be addressed and, if possible, mitigated: (1) the

petition systems imperiling social peace and other negative effects; (2) importing and transplanting “solutions” from other countries; (3) lack of access to the petition system by some groups (“the digital divide”); (4) unintended consequences; and (5) bureaucratization and complexity.

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I. INTRODUCTION

The right to petition one's government for redress of grievances is the right to make a complaint or request of one's government without fear of punishment or reprisals. This right was provided in law as early as in the First Amendment to the Constitution of the United States of 1789 and the French Constitution of 1791. The First Amendment to the Constitution of the United States, for example, includes five freedoms or rights: religion, speech, a free press, assembly, and petition. The "petition" section of the First Amendment, commonly referred to as the Petition Clause, states that people have the right to appeal to the government in favor of or against policies that affect them or about which they feel strongly. This includes the right to gather signatures in support of a cause and to lobby legislative bodies for or against legislation. The historical origin of the right to petition the government, considered by some as probably the oldest political right of citizens, can be traced back to the Magna Carta, one of the first documented formal legal systems developed by Kingdom of England in 1215, or even to earlier laws (Tiburcio, 2015). The right of petitioning the Crown and Parliament for redress of grievances dates back to the reign of King Edward I in the 13th century. Originally, the terms "bill" and "petition" originally had the same meaning. Legislation was in fact no more than a petition agreed to by the King.

Academic research and scholarship focusing on current trends in the right to petition, especially its successes and failures, is relatively limited. Over the last several years, however, a number of Internet-based innovations have been introduced that have drawn more attention to the right

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to petition (Tiburcio, 2015; Riehm, Böhle, and Lindner, 2014). So called "e-petition" systems pioneered by the Scottish Parliament in 1999, and adopted by parliaments and government agencies such as the German Bundestag, the Queensland Parliament in Australia, and in the United Kingdom, have been developed in many parts of the world to provide greater access to and participation in government.

The Uzbekistan law "On Petitions of Physical Bodies and Legal Entities" (hereinafter "Petitions Law") was adopted by the Legislative Chamber on October 29, 2014, and approved by the Senate of the Republic of Uzbekistan on November 13, 2014. Commissioned by the United Nations Development Program's Rule of Law Partnership in Uzbekistan Project (ROLP),[3] this a draft final report of an analysis of the law and provisions for the right to petition the government about the courts and justice system in Uzbekistan and five other countries, Russia, Germany, the United Kingdom, the United States, and Australia. The central question addressed is who, how, and by what processes, mechanisms, capacities and organizational infrastructures should the courts and justices system of Republic of Uzbekistan respond to petitions in compliance with the Petitions Law. The aim is aligned with the goal and objectives of the ROLP – to strengthen public access to and trust in Uzbekistan's civil court system – and, in particular, the first objective of ROLP, i.e., -- to increase court responsiveness to citizen feedback on civil justice administration through the development of institutional mechanisms for public awareness raising. The immediate practical objective of the study is to help ROLP, its partner the Supreme Court of the Republic of Uzbekistan and, as appropriate, other justice sector stakeholders to gain a better understanding of the different petition systems and to identify good international practices that might serve as models or references for the Uzbek Judiciary's effective implementation of the law.

Compliance with the Petitions Law poses significant challenges for the Uzbekistan justice system – challenges that involve issues of legal and political doctrine, principles and concepts, thorny practical considerations, and raise fundamental questions.

- Should the scope of the right to petition or appeal be understood in terms of the entity – the parliaments or legislatures, the executive, or the judiciary -- to which petitions and appeals of citizens are addressed? Should it be understood as part of the governments'

[3] United Nations Development Programme's (UNDP) Consultancy Services, "International Consultant on Nonprocedural Petitions Systematization in Courts" (Project No. 00091042 and Contract No. 2015-60605-UZB-01 for the "Rule of Law Partnership in Uzbekistan" Project (ROLP)).

legislative oversight and control functions as the right to petition is understood in most parts of the world?

- If a right to petition is to be centered in the judiciary, how does implementation of the Petitions Law achieve the proper balance between, on one hand, the independence of the judiciary and the separation of powers of the three branches of government and, on the other hand, the public demands on the justice system for transparency, accountability, responsiveness, and comity?[4] The implementation of the Petitions Law is made much more of a challenge absent a clear legislative intent and aim of Petitions law toward a specific social goal and public policy, e.g., to give voice to people and to open the Uzbekistan's civil court system to public scrutiny, to open up an information flow of public opinion to the courts, and to increase court responsiveness to citizen feedback on civil justice administration.

- Framed as a form of advocacy democracy that is traditionally centered in the legislative process[5] and electoral process, how can a petition process effectively be "pushed" to the judicial branch whose very function is to resolve grievances? Who resolves grievance in petitions aimed at the Judiciary?

- Will a petition process in the Judiciary align or conflict with the functions of courts[6] as prescribed by law?

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[4] Unlike public agencies in the legislative and executive branches of government responsible for considering petitions, actors and institutions in the justice systems, especially judges and courts, are subject to charges of impartiality and conflicts of interest in cases before them that involve litigants who are also petitioners and signatories of petitions who have made statements, proposals, and complaints focused on judges or the courts. Further complicating the issue are the prospects of claims in a judicial proceeding on the grounds any act or acts of reprisals related to the rights of petition. Civil actions for money damages have been filed against citizens and organizations in the United States as a result of citizens' valid exercise of their constitutional rights to petition, speak freely, associate freely, and otherwise participate in and communicate with government. There has been a disturbing increase in lawsuits termed "Strategic Lawsuits Against Public Participation" in government or "SLAPPs" as they are popularly called."

[5] The German provisions for petitioning, for example, remains focused on legislation. "Requests shall be demands and proposals for acts or omissions by organs of state, authorities or other institutions discharging public functions. They shall in particular include proposals for legislation." IV. Principles of the Petitions Committee Governing the Treatment of Requests and Complaints (Procedural Rules). *The Legal Framework for the Work of the Petitions Committee of the German Bundestag*. Accessed October 30, 2015 https://www.bundestag.de/blob/192296/e604c856eec16173a4532631fcf03bc7/rechtsgrundlagen_eng-data.pdf.

[6] In broad organizational terms, a justice system can include not only courts but all "formal and informal institutions that address breaches of law and facilitate peaceful contests over rights and obligations" spanning all three branches of government and multiple non-state actors – police, prosecutors, public defenders, state and civil

- To whom in the Judiciary should petitions be directed and what "special structural units" should be established as provided by Article 8 of the Petitions Law to receive such petitions? Should the petitioning process be national or sub-national, or both?

- If indeed the petitioning process is to be centralized and "pushed down" from one single authority to all branches of government and even to single agencies within those branches, does this suggest that every court at all levels (e.g., first instance courts) will need to build capacity to consider petitions?

- Or, alternatively, should the Judiciary (e.g., the Supreme Court) simply identify an agency or official within the Judiciary - by means of an interagency agreement, for example – that the designated central state body in the legislative or executive branch responsible for considering petitions would seek a response question or issue in a petition focused on the courts or justice system?

These are questions that defy easy answers, especially ones that merely recommend – based on little more than hunches – the transplant of organizational structures and processes that seem to work in one country into the working environment of another country where those transplants do not take hold. In the field of international development this has not worked in the past and is not likely to work today (see Section VI, "Risks and Opportunities" in this report; or, generally, Pritchett et al., 2013; 2014). Unfortunately, we still know very little based on sound empirical evidence about the success of more recently established petition processes and system (Tiburcio, 2015).

Accordingly, the aspirations for this report are modest. It's practical objective simply is to help ROLP and its partner to gain a better understanding of the different petition systems and to identify good international practices that might serve as models or references for the Uzbek Judiciary's effective implementation of the law. Based on my experience with reform efforts centered in justice systems throughout the world, I fully expect that the implementation of the Petitions Law will be "grown" in an iterative process over time. Reform efforts in the justice

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society legal aid providers, alternative dispute resolution providers, administrative adjudication and enforcement mechanisms, customary and community-based institutions, anticorruption and human rights commissions, ombuds offices, and property and commercial registries (World Bank, 2012).

arena are less like a train heading down a track and much more like a sailboat navigating through ever-changing winds and seas (Kleinfeld, 2015).

It is hoped that the analytic framework and results of the evaluation and comparative analysis reported here will guide and help ROLP, its partner the Supreme Court of the Republic of Uzbekistan and, as appropriate, other stakeholders: (a) to obtain a better overview of the different petition systems available in the other five countries; (b) to understand the key characteristics, similarities and differences of the different petition systems, related to the legal and institutional framework (both conventional features and e-petitions) and to the main institutional entities (citizens, parliament and government); and (c) to identify good international practices that, if adapted to the Uzbekistan context, could lead to an effective petitions process.

A. APPROACH AND METHODS OF STUDY

This final report is the result of a desk review conducted October 19 – December 4, 2015, by Independent Consultant Ingo Keilitz. The desk review consisted of library and Internet research, study, analysis, interpretation, and conclusions and recommendations focused on the international practices of systematization of nonprocedural petitions in Uzbekistan and in five other comparison countries including Russia, Germany, the United Kingdom (England and Scotland), the United States, and Australia. A limited number of telephone interviews with ROLP and officials in one or more countries outside of Uzbekistan were conducted to verify and to clarify issues explored by the desk review.

Major tasks and activities and their sequence, described in a Work Plan submitted to ROLP on October 25, included:

> (1) Preliminary research and review of Uzbek's laws and provisions and similar laws and in other countries for the purpose of selecting five countries for comparative analysis and benchmarking Uzbek's laws and provisions.
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> (2) In coordination and consultation with ROLP, identification and selection of five countries for comparative analysis and benchmarking against Uzbek laws and provisions. The selection was determined, in part, by the availability to the Independent Consultant of English-language versions of the laws in the selected comparison countries.
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> (3) Continuing the preliminary research and review of Task 1, this task included research, review, and of study of issues and factors in the laws and provisions of

Uzbekistan and the five comparison countries including: (a) the purpose and intent of legislation; (b) the nature and scope of petitions (e.g., requests for assistance in implementing rights; recommendations for improvements of justice activities and services; and complaints); (c) the scope of procedures of "petitioning," requirements for contents of petitions, and procedures for responding to petitions; (d) exclusions and restrictions (e.g., prisoners and some type of offenders excluded from petitioning); (e) government units identified as receivers of petitions; (f) specific processes for filing, acceptance and processing of petitions, including the rejection and transfer of petitions to other government authorities; (g) methods of review and responses of petitions; (h) timeframe for responding to petitions; (i) appeals of responses to petitions; (j) provisions for transparency, public scrutiny, and publicity of the petitioning process and its results; (k) transfer of petitions to relevant authorities; (l) whether petitions are subject to mandatory reception and consideration or restricted or filtered somehow (e.g., only petitions accompanied by a specified number of signatories); and (m) regulations governing other uses of information contained in petitions.

(4) Design of a simple evaluation and benchmarking framework consisting of the following sequence of component or phases of the petitioning process -- case initiation, case processing; and case adjudication -- and the summary of relevant provisions of Uzbek law and similar laws in five different countries using that framework.

(5) Comparative analysis, evaluation, and benchmarking of Uzbek law and provisions with those of the selected five countries.

(6) Identification and description of challenges, threats and opportunities including alternative approaches for responding to citizen complaints of courts and judges which may not be part of specific legislation, e.g., responses to feedback from court users and the public, and e-petitions.

(7) Formulation of conclusions and recommendation for development of mechanisms of systematization and analysis of nonprocedural petitions relevant to the courts and justice system of Uzbekistan.

(8) Submission of a draft final report on November 14, 2015.

(9) Revision of the draft final report based on comments received from ROLP and the submission of this final report on December 4, 2015.

B. OVERVIEW OF CONTENTS AND LIMITATIONS OF REPORT

1. OVERVIEW OF CONTENTS OF THIS REPORT

This report is divided into six sections beginning with this Introduction and ending with Section VI, "Opportunities and Risks for the Uzbekistan Judiciary." It proceeds in Section II with a synopsis of the Uzbekistan Law "On Petitions of Physical Bodies and Legal Entities" adopted in late 2014, and a review of related developments since the law's enactment. Section III presents synopses of the laws and provisions in six other countries -- Russia, Germany, England and Scotland in the United Kingdom, the United States, and Australis. While largely descriptive and non-evaluative, the synopses highlights unique or distinctive features that inform the evaluation and comparative analysis of Section IV, which describes the results of a comparative analysis of the laws and provisions of the five countries highlighting their salient characteristics and pointing out critical differences that might be of particular relevance for Uzbekistan. Section IV presents two views of the petition systems in the countries studied. The first, independent of the analysis commissioned by ROLP, relies on an index of the World Justice Project – the WJP Rule of Law Index™ -- to compare the right to petition in Uzbekistan against that in Russia, Germany, the United Kingdom, the United States, and Australia. The second view is based on the ROLP-commissioned analysis by the Independent Consultant.

Section V, "Discussions and Conclusions," sets out the conclusions and recommendations drawn from the desk review results and context described in the previous sections. For the most part, the conclusions and recommendations are directed squarely at who the Independent Consultant believes are the main audiences for this report --- ROLP working in cooperation and coordination with the Supreme Court of the Republic of Uzbekistan and, as appropriate, other stakeholders in the Government of Uzbekistan.

Finally, Section VI draws on the Independent Consultant's knowledge and experience with the opportunities and risks of implementing laws governing justice systems throughout the world. For example, opportunities include an increased confidence in the courts, and improved knowledge about what court users and the public believes about the justice system. Risks includes increasing complexity of operations, increased bureaucratization, and what international development scholars have referred to as an "principal agent problem" and the "capacity trap."

As noted in the earlier in this Introduction, compliance with the Petitions Law poses challenges of significant proportions for the Uzbekistan justice system – challenges that involve issues of legal and political doctrine, principles and concepts of governance, and thorny practical

considerations. Should the government entity responsible for the petitions be made part of the governments' legislative oversight and control functions as it been by tradition and practice in most part of the world? Should it be an executive as it is or has been in small part in England and the United States? Or can it be made part of the judiciary? Finally, should it "shoehorned" into any specific government department or functions? While these questions are raised in this report -- as they must to be able to deal with practical issues -- the full exploration of these issues and definitive answers are beyond the scope of the limited "desk review" that is the basis for this report.

2. LIMITATIONS OF THIS REPORT

This study is limited to the right to petition and the systems by governments developed for citizens to realize that right *per se.* It does not consider the wide variety of other ways mentioned in this report that citizens can voice their concerns, register their complaints, and obtain redress including, for example, ombudsman offices or bodies, judiciary disciplinary or conduct commissions, and court performance measurement and management systems. It also does not consider other mechanisms which directly joins the public with the judiciary such as class action suits and public interest litigation (PIL) practiced in India and Nepal.[7]

The limitations of this report should not, however, preclude ROLP from considering these ways in its development of a petition system. Britain has a complex system of individually differentiated ombudsman bodies at all levels of the State. At the national level, the Parliamentary Health Service Ombudsman is based in the House of Commons. The Ombudsman may investigate the administrative actions of a Government department or a public authority after a Member of Parliament has referred a complaint by a member of the public who claims to have suffered injustice as a result of maladministration. Another subject not considered in this paper, though some mention is made, are judicial disciplinary or conduct commissions that can recommend to a state's supreme court or court of last resort that a judge be reprimanded, suspended, or even removed from office for misconduct. Finally, an increasing number of courts throughout the world are building their capacities to measure and manage their

[7] Introduction to Public Interest Litigation (from Health Care Case Law in India – A Reader by CEHAT and ICHRL - pg. 199-200- edited by Adv. Mihir Deasi and Adv. Kamayani Bali Mahabal). Accessed December 4, 2015 http://www.karmayog.org/pil/pil_10720.htm.

performance including the use of court user satisfaction surveys and employee engagement surveys (see Keilitz, 2015).

The report and the desk review upon which it is based is also limited by the scarce information available about the right to petition in practice in Uzbekistan and in Russia. Little seems to be published on the right to petition in Uzbekistan and Russia. This is in sharp contrast to the relatively rich amount of research and commentaries about the petition systems in Germany, the United Kingdom (England and Scotland) and Australia. Finally, this report is limited by reference materials (e.g., statistics on the German e-petition systems) not available in English.

II. UZBEKISTAN LAW[8] AND CONTEXT

The Uzbekistan law "On Petitions of Physical Bodies and Legal Entities" (hereinafter "Petitions Law") was adopted by the Legislative Chamber on October 29, 2014, and approved by the Senate of the Republic of Uzbekistan on November 13, 2014. It includes 31 articles organized in five chapters. The law bears similarities to the Russian federal law in many of its provisions. Chapter 1 describes the general provisions of the law including its purpose and scope (Articles 1 -9); Chapter 2 includes guarantees of the right to petition (Articles 10 – 15); Chapter 3 describes procedures for filing and considering petitions (Articles 21 -24); Chapter 4 describes the rights of petitioners and the responsibilities of state authorities in considering petitions (Articles 21 - 24); and, finally, Chapter 5 provides for the resolution of disputes, damages and reimbursement of expenses, and other administrative matters arising in the petitions process (Articles 25 – 31).

Article 1 expresses the purpose of the law in just a few words – to *regulate* the petitioning process as it is implemented by government authorities. Conspicuously absent from this terse statement of a largely bureaucratic and procedural objective are statements of legislative intent and allusions to broad public policy, as well as aspirations and strategic goals such as those of the ROLP – i.e., to strengthen public access to and trust in Uzbekistan's civil court system, and to increase court responsiveness to citizen feedback on civil justice administration through the development of institutional mechanisms for public awareness raising. The design and plans for implementation of the Petitions Law is likely to be made much more difficult by this lack of information about legislative intent and public policy.

Article 3 explicitly establishes the right of "legal bodies and legal persons," as well as those of foreign states and stateless persons, to petition state authorities in the form of statements, proposals, and complaints.[9] This right should not violate the "rights, freedoms, and legitimate interests of other physical bodies and legal entities, as well as the interests of society and the state." Article 5 defines a statement as a "request for assistance in the implementation of the rights, freedoms and legitimate interests; "proposals" are defined as petitions "containing recommendations for improving the state and public activity"; and a "complaint" is defined as a petition "demanding the restoration od violated rights, freedoms and protection of legitimate interests." These three types of petitions are given equal importance by Article 5 and may be in

[8] Review and interpretations of the Petitions Law in this section are based a non-official English translation provided to the author by ROLP on September 18, 2015.

[9] Article 7 notes that petitions received by public authorities from the media can be used "to study and reflect public opinion in accordance with legislation on mass media."

oral, written or electronic form (Article 4). Article 2 makes it clear that the petitioning process is "non-procedural," i.e., it does not apply to existing laws governing "administrative responsibility, civil procedure, penitentiary, economic procedural and legislative acts; [and] mutual correspondence of the state bodies and their structural divisions." Article 6 specifies the identifying information to be provided by a petitioner including his or her name, address and place of residence, and a valid signature. Petitions filed by a representative of the petitioner must accompany "documents confirming the authority" of the representative.

The five articles in Chapter 2 of the law, "Guarantees of the Rights of Physical Bodies and Legal Entities to Petition," expand on the expression of the right to petition in Article 3 of Chapter 1, "General Provisions." Specifically, Article 10: (a) prohibits discrimination in provision of the right in all forms including gender, race, nationality, language, religion, social origin, belief, personal and social status, form of property, address and residence; (b) allows individual or collective petitions; (c) makes the considerations of petitions mandatory, except in cases of anonymous petitions, filings of petitions by representatives of petitioners without proper documentation, and petitions complying with other requirements established by law; (d) provides for an appeal of refusal of the responsible public authority to receive or consider petitions; (e) prohibits the employees of the responsible public authorities from divulging , without their consent, private information about petitioners and other information constituting state secrets or other secrets protected by law; (f) disallows any clarification of information not directly related to the petition; and (e) explicitly prohibits "persecution" of the petitioner, his or her family or representative.

Provisions for the initiation of the petition process and the consideration of petitions are described in Article 8, Chapter 1, and the five articles in Chapter 3 of the law. Article 8 focus on how, where and when petitions should be filed and how the state authorities should organize themselves to receive petitions and to initiate the case, stating that the reception of petitioners (in the case of oral petitions) and their petitions shall be done by "the head of the state body or authorized person." Special organizational structures may be established and their staffing defined, presumably, at the discretion of responsible state body.

Reportedly, the Supreme Court has established the "Citizen Petitions Department," a formal unit that receives petitions along with individual judges and registry offices of lower instances courts. The Department receives petitions related to both criminal courts and civil courts. It has a staff of about 18 persons including a head of the department, four staff of chancellery, two each for criminal and civil, administrative staff and consultants. The Department identifies the

individual or department deemed competent to respond to the petition and physically delivers the petition to them.[10] From the vantage point of this Independent Consultant, this "physical delivery" and transfers of petitions to competent government bodies and officials seems unwieldy in terms of time and effort, especially if a delivery is made from Tashkent to Nukus in Northwestern Uzbekistan.

Information about the petitioning process, including time and place, is to be posted on the "official" website of the responsible state body, as well as communicated in "public places in the stands or other technical means in their administrative building." Article 8 provides for other procedural issues arising during the receipt of petitions, including the refusals and transfers of petitions to other public authorities, and the use of special equipment such as photography and audio and video recording.

The five articles of Chapter 3, "Provisions of Filing Petitions and Their Consideration," provide for the consideration and resolution of the issues raised in the petition on the merits within 15 days of receipt, or within a month when there are requests for additional information. Other provisions include: (a) inclusion of attachments of previous decisions of other information relevant for the consideration of the petition; (b) interim timeframes and deadlines for consideration of petitions[11] including transfers (no more than five days after receipt) of petitions for resolution to state agencies with authority over issues raised in the petition, receipt of requested additional information from state authorities (ten days or up to a month); (c) consideration of the petition in the presence and absence of the petitioner; (d) participation of economic entities if the consideration of the petition requires it; and (e) the right to withdraw a petition.

Chapter 4, "Rights of Physical Bodies and Legal Entities and Responsibilities of State Bodies in Consideration of Petitions," includes four articles. Article 21 provides for the petitioners access to and participation in the process of consideration of their petitions, including the right to present arguments and explanations, to examine materials, to submit additional materials, and to be assisted by a lawyer. Article 22 imposes on responsible authorities considering petitions the obligation to take measures to stop illegal actions or inaction taken against petitioners.

Article 23 requires the state agency that has considered a petition to report the results of its consideration "immediately" and make appropriate explanations. Reportedly, about 26, 000

[10] Dr. Erkin Abdurizaev, Project Manager, ROLP, personal, communications, November 2, 2015.
[11] It is noteworthy that Article 17 states that, as a rule, deadlines for petitions are not mandated.

petitions were received by judges, by the Citizens Petitions Department, and by registry offices in lower instances courts in 2014, a considerable number. Some statistical data on the petitions are compiled by the Statistics Department in the Supreme Court and specialists in the lower courts, but no in-depth assessment has been made to date.[12] Finally, Article 24 obligates state authorities considering petitions to compile and summarize its considerations of petitions in order to identify and to eliminate the causes of any violations of the rights lawful interests of petitioners and the interests of "society and the state."

Chapter 5, "Final Provisions," provides that disputes arising in the petitioning process are to be settled in the "manner prescribed by law" (Article 25); provides for pecuniary and non-pecuniary damages for illegal decisions in petition cases (Article 26); and reimbursement of expenses incurred by public authorities in considering petitions containing false information (Article 27).

More than a decade ago, the American Bar Association's Central European and Eurasian Law Initiative reported in its *Judicial Reform Index for Uzbekistan* (American Bar Association, 2002)[13] that it found no meaningful process by which other judges, lawyers, and the public may register complaints concerning judicial conduct. It concluded:

> There is no one clear process for registering complaints regarding judicial conduct, and neither the judges, the MOJ, nor the bar have taken any steps to clarify that process or inform the public concerning what recourses are available and how to use them. Nevertheless, citizens and advocates may pursue a variety of avenues, and the Office of the Ombudsman reports that it is receiving high numbers of complaints regarding the judiciary and obtaining some results for the citizens.

Whether accurate or not today, the American Bar Association's perception may be part of the relevant context for the passing of Uzbek's Petitions Law.

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[12] Dr. Erkin Abdurizaev, Project Manager, ROLP, personal, communications, November 2, 2015.

[13] The Judicial Reform Index (JRI) is a tool developed by the American Bar Association's Central European and Eurasian Law Initiative (ABA/CEELI). Its purpose is to assess a cross-section of factors important to judicial reform in emerging democracies. It relies on six factors in the areas of accountability and transparency including judicial decisions and improper influence, code of ethics, judicial conduct complain process, public media access to proceedings, publications of judicial decisions, and maintenance of trial records.

III. OVERVIEW OF LAWS AND PROVISONS FOR THE RIGHT TO PETITON GOVERNMENT IN FIVE OTHER COUNTRIES

Most countries provide their citizens the right to petition or appeal to their government, with the primary focus of such provisions being on the actions of parliaments or legislatures, though in the United Kingdom and the United States the offices of the Prime Minister and President, respectively, consider citizens' petitions, and in the United States activist groups and organizations are very active in petitioning related to many causes. With the exception of only five states -- Denmark, Estonia, Poland, Sweden, and Cyprus -- all European Union (EU) member states, Scotland, and the European Parliament have some type of petitioning process (Tiburcio, 2015; Riehm, Böhle, and Lindner (2014). The right to petition the governments in these countries is mostly understood as part of the governments' legislative oversight and control functions. The scope of the right to petition or appeal thus can be understood in terms of the entity – the parliaments or legislatures -- to which petitions and appeals of citizens are addressed. Tiburcio (2015, 15) explains it well:

> If for example a petition requests a new hospital, or protests against the closure of a school, the petition is not actually asking Parliament to build a hospital or decide that the school remains open (which are typical executive powers falling into the responsibility of government, which Parliament cannot invade on the basis of the principle of separation of powers). Actually, what the petitions are requesting is that Parliament exercises its control function (which includes policy debate), i.e. to send questions to the competent ministry, demanding answers, perhaps summon the member of the government to be heard in Parliament or merely to debate the petition.

This section presents synopses of the rights and provisions to petition or to appeal to the governments of six countries: Russia, Germany, two countries within the United Kingdom (England and Scotland), the United States, and Australia. **Bolded tex**t **in these synopses highlights unique or distinctive features** of the petitioning processes of these countries **that might deserve a more in-depth examination** by the ROLP, the Supreme Court of the Republic of Uzbekistan, and other stakeholders in the implementation of the Petitions Law. These notable unique or distinctive features are put in either a positive or negative light, i.e., pros and cons, in the comparative analysis presented in Section IV of this paper.

A. RUSSIA[14]

Russian Federal Law[15] which, as noted above, bears distinct **similarities to the Uzbek Petitions Law**, regulates Russian citizens' and other legal entities' right to appeal to (or to petition)[16] state authorities and local government. This right is recognized by the Constitution of the Russian Federation. Article 2 of the federal law, "The right of citizens to appeal," makes the right to appeal explicit:

> 1. Citizens have the right to appeal personally and also to submit individual and collective appeals, including appeals of citizens' associations, including legal entities, state agencies, local governments and their officials in state and local government agencies and other organizations for which responsible for carrying out important public functions and their officials.
>
> 2. Citizens exercise the right to appeal freely and voluntarily. Implementation of the citizens' right to appeal should not violate the rights and freedoms of others.[17]

Like the Petitions Law in Uzbekistan, **the petition law and provisions in Russian Law do not locate the petitioning process in a particular government branch or department – parliamentary or legislative, executive, or judicial – to which appeals or petitions are addressed. Nor does it identify the scope and nature of the right to appeal as part of the traditional function of these branches.** This is referred to as a "broad-based approach" in Section V, Conclusions and Recommendations." As noted above, the right to petition the governments in Germany, the United Kingdom, and Australia is mostly understood as part of the governments' parliamentary or legislative oversight and control functions. It is understood

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[14] The description of the Russian law and provisions for petitioning the government in this section relies on an unofficial and imperfect English translation. Accessed October 12, 2015 https://translate.google.com/translate?hl=en&sl=ru&u=http://base.garant.ru/12146661/&prev=search.

[15] Article 2. "The right of citizens to appeal." Federal Law of May 2, 2006 N 59-FZ "On the order of consideration of citizens of the Russian Federation" (as amended). https://translate.google.com/translate?hl=en&sl=ru&u=http://base.garant.ru/12146661/&prev=search.

[16] In the unofficial translation relied upon for this section of the paper, the word "appeal" is used instead of "petition, "except in Article 9, paragraph 1, in which the word "petition" is used. The use of the word "appeal" in the Russian federal law should not be confused with its use to refer to an appeal of a ruling or judgement of an appellate court or other tribunal in a legal case.

[17] In July 2012, the Constitutional Court of the Russian Federation took notice of the first paragraph Article 2 of the Federal Law, as well as Article 3, "Legal Regulation of relations related to the consideration to the consideration of citizens' appeals," finding inconsistencies with the Constitution of the Russian Federation, "uncertainty of regulatory content, generating practical ambiguous interpretation of them and accordingly, the possibility of arbitrary application." It ruled that until the adoption of the new legal regulation of the provisions of paragraph 1 of Article 1 and Article 3 of this Federal Law, it shall be applied in accordance with article 19 (Part 1), 33, 45, 72 (point "b" of Part 1) and 76 of the Constitution of the Russian Federation. Decision of the Constitutional Court of the Russian Federation of July 18, 2012 N 19-P.

in terms of the entity – the parliaments or legislatures -- to which petitions and appeals of citizens are addressed.

Beyond guaranteeing the right to appeal, the Russian law provides for its exercise in practice including: the treatment that citizens should be accorded given when their appeal to state bodies is considered (Article 5); guarantees for the security of citizens making appeals including protections against persecution (Article 6); requirements for written requests (Article 7); registration and transfer of the written appeal to the competent state body, local government body, or official (Article 8); obligation of a competent state or local government authority to accept and to review an appeal (Article 9); consideration of the appeal including the procedures and terms for consideration of written appeals (Article 10, 11, and 12); procedures for personal reception of citizens making appeals in person orally (Article 13); control and compliance with the rules of considering appeals (Article 14); liability for violation of the federal law (Article 15); and compensation for damages and recovery of costs incurred in the consideration of appeals (Article 16).

1. SUBMITTING AN APPEAL

As a matter of law, there are few restrictions on Russian citizens' right to make appeals to the government. They can be made by almost anyone, raise any concerns, and be submitted to any organization and official responsible for carrying out public functions -- state agencies or authorities, local government, legal entities, and citizen associations. Appeals can be made by any citizen, including foreign citizens and stateless persons (except as may be stipulated by international treaties, federal constitutional laws, other federal laws). Appeals can be made in person orally, in writing, or **in electronic form either individually or collectively** (Articles 1, 2, and 7). In contrast to the provisions for e-petitions of Germany, the United Kingdom, and the United States, Russian law provides for electronic submissions and responses only in passing to clarify that "written" means both hand-written and electronic. **Procedures for sending, receiving, and considering electronic appeals are not specified.**

Appeals can take the form of a proposal or offer, an application, or a complaint. Proposals or offers are defined as recommendations for improving laws and regulations, activities of state bodies and local government, the development of social relations, and improvements of socio-economic and other spheres of state and society. Applications are requests for assistance in implementing constitutional rights and freedoms of the person making the request or those of others, or in cases of reported violations, shortcomings, or criticisms of the laws and regulations of state agencies, local government, and public officials. Complaints are requests for the

protection or restoration of the violated rights, freedoms, or legitimate interests of the individual or those of others (Article 4).

As part of an appeal, citizens may submit additional relevant documents or materials, or apply for their reclamation, presumably, if they are not in their possession. They may inspect the documents and materials as long as it does not affect the rights, freedoms, and legitimate interests of others, or contain secrets protected by law. (Articles 5 and 7).

2. RECEIPT, ACCEPTANCE AND PROCESSING OF APPEALS

Citizens can send written requests, presumably delivered in person or by electronic means, to the state agency, local government, or official believed to be competent to respond to the request (Article 8). Once an appeal is made, appellants are entitled to be informed the status of their appeals including any outstanding issues, and to be notified of the forwarding of the appeal (request) to a competent state agency, local government or officials deemed competent to deal with any outstanding issues in the appeal, and to be protected from persecution or reprisals in connection with his or her appeal. During the processing of an appeal, divulging information contained in the appeal, including private matters, is prohibited without the appellant consent (Article 5 and 6).

Requests must be registered within three days of receipt by a state body, local government, or officials thereof. A written request containing issues that are not within the competence of receiving entity, is transferred within seven days from the date of registration to another entity which is deemed competent to make a decision about the issues raised, and the citizen notified accordingly (Article 8).

Review of the request is mandatory (Article 9), except if it contains offensive language, or threatens life, health or property, in which case the appeal can remain unanswered and the appellant informed accordingly (Article 11). Official contacts can be terminated and the appellant informed accordingly if a decision has already been rendered and the responsible public entity deems any further actions groundless.

3. CONSIDERATION OF APPEALS

The state body, local authority, or official provides “an objective, comprehensive, and timely review” of the appeal with the participation of the citizen making the appeal, “if necessary,” takes “measures to restore or protect the violated rights, freedoms, and legitimate interests of citizens,” and provides a written reply on the merits of the issues raised in the appeal (Article

10). A written request shall be considered within 30 days from the date of registration of the appeal (Article 12).[18]

The law makes provisions for oral communications of appeals. Time and place of the personal reception of the citizen for purposes of oral appeal is, according to the law, communicated to citizens (Article 13), although by what mechanisms is not specified. If the facts and circumstances of the oral appeal are "obvious and do not require additional verification," responses can be given orally (with the consent of the appellant) in the personal reception. Otherwise, the appellant is provided a written response (Article 13).

In regard to the "control "of the consideration of appeals, the law mandates only that state agencies, local governments and officials "monitor the compliance ….. of consideration of applications, analyze the content of incoming calls, take timely measures to identify and eliminate the causes of violations of the rights, freedoms and legitimate interests of citizens" (Article 14). Finally, citizens have the right to compensation for damages due to unlawful actions or inactions occurring during the course of the consideration of their appeals (Article 16).

Russian federal law's provisions for appeal to the government appear fair and equitable. Agreeing with that assessment, some commentators (e.g., Beschastna, 2013) who, however, focused mostly on compliance with international conventions as applied in the judicial decisions, have decried recent excessive limitation of freedom of expression, particularly freedom to criticize the government. This suggest that there may be gaps between the "law on the books" and the "law in practice" for appealing to the government.

B. GERMANY[19]

Article 17 in Chapter I of the Basic Law (Grundgesetz) of the Federal Republic of Germany, provides for the right of petition. It guarantees that "[e]very person shall have the right individually or jointly with others to address written requests or complaints to competent

[18] Exceptional requests "received by the highest official of the Russian Federation (the head of the supreme executive body of state power of subjects of the Russian Federation), and containing information on the facts of possible violations of the laws of the Russian Federation in the field of migration," must be considered within 20 days from the registration of the request.

[19] The Office of Technology Assessment at the German Bundestag (TAB) monitored the e-petition innovation in Germany up to the year 2007. It published a report on its findings. A second extensive study traced the further development of the e-petition system also describing the modernization processes taking place at the national level at the Bundestag and petition bodies in individual German Länder, which are reviewing their own "internet strategy" in the light of the German Bundestag's moves towards modernization at the national level. This section draws heavily from the results of the evaluation described in an in-depth report of close to 300 pages by Riehm, Böhle, and Lindner (2014).

authorities and to the legislature." Article 45c requires the German national parliament (the Bundestag) to appoint a Petitions Committee to handle requests and complaints addressed to the Bundestag pursuant to Article 17.

In 2005, a version of "e-petitioner" system developed in Scotland[20] was produced for the German national Parliament (Bundestag), part of a collaborative project with the Scottish Parliament and the Bundestag's "Online Services Department." The Bundestag and the parliaments of all 16 individual German states (Länder), including the city states, have **parliamentary petition bodies**. Of the various petition bodies, the Petitions Committee of the German Bundestag is the most well-known. In Germany today, both at the national in the majority of states at the subnational level, petitions submitted to the government can be **submitted electronically by e-petition**.[21]

However, petitions based on the model of the German Bundestag (with online signature and discussion forums) were only offered by the city state of Bremen, according to Riehm, Böhle, and Lindner writing in 2014. These so called "Public Petitions," as distinguished from conventional hand-written petitions, can be **viewed on government websites**. An individual can add his or her name in support of any petition, and can **discuss a petition in an online forum**. Petitioners can be invited to attend public sessions of the Petitions Committee to **present their matter personally before the Committee.**

This reform effort is the result of a distinctive innovation, largely inspired by the Scottish example (see below, Section C. United Kingdom), in the petitioning system of the German Bundestag. It included other features aiming at improving the system, such as a possible **hearing and a public debate** in the Petitions Committee for petitions that reach a quorum of 50,000 supporting signatures. While most of these electronic features are available for Public Petitions, **"conventional petitions" are still in place**, but are mostly not affected by this modernization process and **remain not public.**

As described by Riehm et al. (2015, 26), at the national level, the German Bundestag's public e–petitioning system is unique, at least when compared to those of other European member states. "At national level, the German Bundestag's public e–petitioning system is unique in the

[20] See Section III.C.3, "The Scottish Parliament E-Petitioners System," in this report.
[21] See the German Bundestag online brochure describing the online e-petition process. Accessed November 5, 2015 https://www.bundestag.de/blob/189918/da128fc8e7f7339b7e3bbc57add3833a/flyer-data.pdf.

EU. Of the countries wishing to expand their internet-based services, Luxemburg is explicitly planning its e-petition system with reference to the one of the German Bundestag."

1. SUMISSION AND SCREENING OF E-PETITONS

Petitions must always be submitted in writing, but this can be done by mail, by fax, or using an online e-petition. The percent of electronically submitted petitions to the German Bundestag as the proportion of all petitions including conventional petitions rose from 17% in 2006 to 34% in 2010. From September 2005 to the end of 2010, more than 3 million signatures were counted for about 2,100 e-petitions, and more than 100,000 contributions to discussions were posted on the forums.

E-petitions are subject to screening before their online postings. The process for verifying the admissibility of e-petitions is governed by special rules including admissibility criteria.

According to Riehm et al. (2015, 15) this screening has led to debates in the user forums of the e-petition platform, criticized for its perceived lack of transparency and low acceptance rate. More than half of the surveyed persons who submitted e-petitions in 2009 said they did not understand the reason for their non-acceptance. Riehm and his colleagues state that there are, however, reasonable explanations for this low level of acceptance of petitions, including the submission of duplicate petitions, petitions deemed unsuitable for debate in public, petitions judged to be evidently unsuccessful or considered as not pertinent or based on false assumptions, petitions not accepted because they concerned personal requests and complaints, and petitions deemed to imperil "social peace," or otherwise could have a negative effect on international relations. Petitions that are not accepted as e-petitions are handled following the conventional non-public procedure.

2. ONLINE POSTING OF PETTIONS

After publication of a petition online, **supportive signatures can be added to the petition** within six weeks, and it can be debated in an online forum. Though 3 million signatures have collected for about 2,100 e-petitions since 2005, not many have gotten many supporting signatures. The average number of signatures per petition was about 1,170 for the period 2005 to 2010, with 85% of all petitions receiving fewer than 1,000 signatures; only nine (0.4%) received more than 50,000 online signatures within the six week time limit.

According to Riehm et al. (2014, 16) there was no evidence of significant misuse of the petition signing function. They suggest not setting a "higher level of identity checking for the petitioners

and supporting signatories that use internet than for those who use the conventional paper-bound process."

3. CONSIDERATIONS OF PETITIONS

The process of accepting a petition starts with an examination of a petition's contents by the Committee Service. A number of submissions are resolved during this initial check before they are actually forwarded for parliamentary consultation. This applies, for example, if a competent public authority is able to provide immediate relief. In cases where the Committee Service considers that petitions clearly have little chance of success, petitioners are informed of this and further processing of the petition is stopped, unless the petitioner objects. As part of this examination process, **opinions on the respective subject matter of a petition are generally sought from the competent ministries or other bodies including, presumably, components of the justices system, with an obligation to provide information.**

Petitions that are less distinct are given opinions and draft decisions by the Committee Service and then forwarded to two "rapporteurs" who are members of the Petitions Committee. They check the documents, obtain additional opinions where applicable, speak to the competent ministries or authorities and in individual cases also hold local hearings. At the conclusion of this petitioning process, the plenary session of the German Bundestag generally decides on lists of petitions with recommendations for resolution. Petitioners are notified in writing and in the case of e-petitions, the **resolution is posted online.**

An innovative component of the e-petition platform not available for conventional petitions is the establishment of **online discussion forums for every petition**. Such forums are moderated by the petition body, intervening with warnings and deletions of postings in cases of breaches of rules which, according to Riehm and his colleagues (2015, 16), are rare. Discussion forums are not systematically evaluated and taken into account in the petition process.

Postings to discussions can be made by the registered users directly in a forum. More than 100,000 contributions have been made by about 10,000 participants since 2005. In surveys of participants, the great **majority of users considered the forums to be pertinent and informative.** Riehm and his colleagues (2015, 17) found that roughly two thirds of the forum users surveyed in 2009 wished they could have established contact with members of parliament by means of the forums. They also thought that the forums should support the petitions committee in its assessment of the merits of a petition.

4. EVALUATION OF SUCCESS OF THE E- PETITION SYSTEM

Evidence of the success of Germany's e-petition system, not surprisingly, depends on who is asked. The German government found it to be successful. Petitioners not as much. As reported by Riehms and his colleagues (2015, 17), the activity report of the petitions committee for the year 2009 found that almost half of the processes were positively concluded, including 38.1 percent of petitions that were settled by advice, information, referral and communication of material. In 7.6 percent of the cases, the request in the petition was satisfied.

The assessments of success by petitioners were more negative. Only about a third of the surveyed petitioners were satisfied with the handling of their petition by the German Bundestag, believing that the process had been worth their effort. Only 15.2 percent of the petitioners using e-petitions felt that the German Bundestag had actively advocated their case, compared to 20.7percent of the petitioners who submitted conventional petitions. However, **three quarters of those submitting e-petitions, compared to 63 percent who submitted conventional petitions, stated that they would again submit a petition under similar circumstances**. Riehm et al. explain that this "apparent contradiction between the critical assessment of success and the persistent intentions to continue using the system can be explained by the fact that the motives for submitting petitions are varied and are not confined to the straightforward fulfilment of the request. For some petitioners, it is just as important that politicians and the general public learn of their request, so that a 'solution' along the lines wished by the petitioner may perhaps be attained in the medium or long term."

C. UNITED KINGDOM[22]

As noted by Riehm, Böhle, and Lindner (2014, 18,), the petition system of the United Kingdom:

> [H]as been attracting renewed attention for a good ten years. At all levels of the political system, reforms of the petition system have been implemented or are currently under discussion. Despite major differences in the relevant political and institutional aims and their practical implementation, the **use of the internet is a striking common feature of the current efforts at modernization** (emphasis added).

[22] Like the previous section of this paper describing the petition system in Germany, this section draws liberally from the excellent report of by Riehm, Böhle, and Lindner (2014). See supra note 18.

1. THE PETITION SYSTEM OF ENGLAND'S PARLIAMENT

In contrast to Germany and other countries in Europe, **petitions cannot be submitted to the Westminster Parliament directly by citizens but must be made through the intermediary of elected members of the parliament.** This means that a petitioner must first have access to a member of parliament (MP) – typically, the petitioner's local MP – who can then bring the petition before Parliament, a procedure known as the "MP filter" of "sponsorship model."

Petitions are forwarded by the MP to the relevant special committees and ministries of the executive branch. The special committees are obliged to include the petitions on their agenda, though **ministries are only obligated to respond to "substantial petitions."** The text of **petitions and any answers by the executive are published by the parliamentary documentation service (Hansard) and on the Internet.** According to Riehms and his colleagues (2015, 19), this procedure has been criticized for lack of results. Reforms have been under discussion in the parliamentary committees since 2005 with the aim, among other objectives, the **introduction of an electronic petition system**, which is already in place in the Prime Minister's office**.**

On December 1, 2015, the United Kingdom Government and Parliament website listed 3,504 petitions of which 1,961 were open on December 1, 2015.[23] When a petition gains 10,000 supporting signatures, the government will respond. At 100,000 signatures, a petition will be considered for debate in Parliament. A total of 57 petitions got a response from the Government and 11 petitions were debated in the House of Commons. None of these 68 petitions had anything to do with the functioning of the United Kingdom's courts.

Using its interactive function with the search term "courts" revealed 92 petitions. All of the 92 petitions were directed at the Government in general and Parliament specifically, and most had little to do with administration and operation of courts *per se*, and nothing that the courts could do themselves if they were responsible to respond to them including petitions such as ones to:

- make the production, sale and use of cannabis legal (231,058 supporting signatures);
- prohibit the use of Sharia courts within the United Kingdom (10,561);
- change the law so people who abuse animals go to prison (7,624);

[23] Petitions. UK Government and Parliament. Accessed November 30, 2015 https://petition.parliament.uk/petitions.

- deport criminals originating from outside the United Kingdom and ban them from reentering (1,150);
- support non-resident parents where a court order is in place, to introduce mental health education to the national curriculum (29,240); and,
- introduce minimum prices that milk buyers purchase their milk for from farmers (56,181).

Only a handful of the petitions appeared directed at the courts. Here are three few illustrative examples:

- *Keep Hartlepool's Court Open. Say No to becoming a Ghost Town* (545 supporting signatures). The Ministry of Justice is proposing that Hartlepool's Courts close and that the service is transferred to Teesside. This will deprive the residents of the town of a vital service and will result in the denial of justice to some of the most needy & vulnerable in our society.

- *Removal of Judge Sally Cahill & Mr Justice Walker* (62 supporting signatures). Recent rulings by two courts have determined that the sexual abuse of girls of Asian ethnicity is more serious and, warrants longer sentences, than had they been of European ethnicity. One of the pillars of English law is that all are equal in the eyes of the law & that nobody should receive unfavourable or favourable treatment on the grounds of ethnicity, religion or other beliefs. In light of these inappropriate & discriminatory rulings by Judge Sally Cahill & Mr Justice Walker, parties to this petition call on the government to remove the afore-mentioned from taking part in any further oversight of judicial hearings. We further call on the Home Office to issue guidance to all judges making clear that rulings should be equal, no matter what the ethnicity of the perpretrator(s) or victim(s).

- *Family Law Courts Need To Change And Majorly Overhaul The Whole System* (946 signatures).Children's Voices need to be heard, they can no longer sit in silence and be fearful of authority. They need to be able to trust and confide in individuals and not be called liars. Parents need to stop being gagged. This is draconian, and they should be able to speak about their individual cases.

As noted above, at 10,000 supporting signatures, the government will respond to petitions exceeding this threshold. At 100,000 signatures, a petition will be considered for debate in

Parliament. With fewer than 1,000 supporting signatures to date, each of these three illustrative examples of petitions aimed at court administration and judicial action are unlikely to receive responses from the government.

2. THE PRIME MINISTER'S E-PETITION SYSTEM

The e-petition service of the Prime Minister's office was established in November 2006 but deactivated shortly before the election of the new British Parliament in May 2010. In February 2007, an e-petition against road pricing and car tracking attracted over 1.8 million e-signatures, something that was unexpected by government ministers.[24]

Like the United States' White House (executive) system, **users were able to submit and publish their requests and collect signatures on the e-petition platform**. To obtain a response from the government, the petitioner **had to achieve a signature quorum** of at least 500 online signatures. The Prime Minister's **e-petition system was popular**. Between December 2006 and January 2010, more than 67,000 e-petitions were submitted. Of these, according to Riehm et al. (2015, 19), petitions admitted for consideration obtained a total of 11.8 million electronic signatures. It was criticized, however, because it was not well integrated with the decision-making routines of the executive, and decisions and actions on **petitions were largely at the discretion of the Prime Minister's office**, a criticism that can also be leveled on the executive-based system in the United States. The new government reportedly announced a modified revival of the executive e-petition system in April 2010, though there is skepticism that two new systems – one parliament-based and one executive based -- would be very difficult to justify. The new system would provide for parliamentary debate of petitions attracting more than 100,000 supporting signatures.

3. THE SCOTTISH PARLIAMENT E-PETITIONER SYSTEM

The Scottish Parliament played a pioneering role in 1999 by becoming the first elected assembly in the world to introduce an electronic petition, referred to as the "e-petitoner," integrated with parliamentary procedure. It allows citizens to raise and sign a petition, read background information on the issue, and add comments to an online forum associated with each petition. Three groups of actors are involved in the e-petition system: (1) individuals who raise the petition; (2) individuals who support particular petitions (signatories); and (3) the body

[24] National Archives (2008). PM emails road pricing signatories. Accessed November 30, 2015 http://webarchive.nationalarchives.gov.uk/20090214111155/http:/www.pm.gov.uk/output/Page11050.asp.

to which the petitions are addressed – government, parliament, and local councils – and who have the responsibility for administration of the system.

Petitions submitted by e-mail or by regular mail are published on the Internet and their **consideration and decision-making process can be followed and monitored on the Scottish Parliament website**.[25] The petitioner submits the petition text and any background information, which is published on the website. After the petition is submitted, visitors may track the petitions progress through the parliament or local council by means of a "progress in parliament" button on the website. In addition to instructions for submitting petitions online, **information related to the petition process is available online**, **including the number of supporting signatures, documents related to the petition, as well as the minutes of meetings in which the petition is discussed.** An online discussion forum allows the petitioner to prompt the public into debate about the issue raised in the petition. People who disagree may register their opinion and reasoning. The administrators moderate the discussion.

The Scottish website also includes a **wide variety of information** material, such as text, brochures and animated videos, available in several languages (including Arabic, Bengali, Punjabi, Simplified Chinese/Mandarin, or Urdu) **explaining to the public how the petition system works**, from submission, consideration to the final decision. Functions of the e-petition platform include the possibility to table petitions or sign already tabled petitions on-line, as well as to hold on-line discussions on the petitions. **Debates and hearings of the petitioners can be watched on the Internet.**

On December 1, using the interactive search functions of the Scottish website, a total of only 13 petitions lodged between September 2009 and November 2015 were identified using the predetermined filters of the subject category of "justice" and the status category of "lodged" (meaning that those petitions were currently under consideration by the Public Petitions Committee). These 13 petitions formally called upon the "Scottish Parliament to urge the Scottish Government" to do the following in each of the petitions:

- Hold a full and comprehensive review of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 with a view to having this Act repealed.

[25] How to Petition. Scottish Parliament. Accessed November 5, 2015 https://www.scottish.parliament.uk/gettinginvolved/petitions/CreateAPetition.aspx.

- Change the law of evidence so that in cases where a person is tried for a crime that has no connection to his/her occupation, his/her occupation should be dealt with by the courts as an irrelevant and non-aggravating factor.
- Change or review the laws that govern parental rights and child access, and their implementation, to ensure the resident parent cannot stop the non-resident parent from contact with his/her child.
- Change the law and procedures in regards to investigating unascertained deaths, suicides and fatal accidents in Scotland.
- Increase the maximum possible sentence for violent re-offenders who commit murder to be a whole of life custodial sentence.
- Create a Register of Pecuniary Interests of Judges Bill (as is currently being considered in New Zealand's Parliament) or amend present legislation to require all members of the Judiciary in Scotland to submit their interests & hospitality received to a publicly available Register of Interests.
- Amend the law of succession to end the requirement for a Bond of Caution by an executor-dative when seeking confirmation of any intestate estate.
- Review the decision made by the Scottish Fire and Rescue Service to close the Inverness Control Room.
- Undertake a committee inquiry into the closure of Police, Fire, and Non-Emergency Service Centres north of Dundee. In particular, the major concerns raised have been the loss of public knoweldge; public safety; officers being off the street and overwhelmed in managing the increased workload this would create.
- Introduce the right to a mandatory public inquiry with full evidence release in deaths determined to be self-inflicted or accidental, following suspicious death investigations.
- Amend the Legal Profession and Legal Aid (Scotland) Act 2007 by removing any references to complaints being made timeously.
- Open an independent inquiry into the 2001 Kamp van Zeist conviction of Abdelbaset Ali Mohmed al-Megrahi for the bombing of Pan Am flight 103 in December 1988.
- Give the same level of protection to the families of people from Scotland who die abroad as is currently in place for people from England by amending the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 to require the holding of a fatal accident inquiry when a person from Scotland dies abroad.

According to Riehm et al. (2015), the **Scottish system is characterized by efforts to engage petitioners in the petition process and high degree of transparency and publicity.** It has neither a "MP filter," as employed in England, nor a quorum signatories before a petition is considered. **In addition to written and electronic submissions (by email), petitions can be presented in person, by telephone, as a video and, reportedly, in the future even by Short Text Messaging (SMS).** As noted by Riem and his colleagues:

> Petitioners are encouraged to clarify the content of their petition by videos, which are made available to the public by internet. The committee keeps the public informed via a blog and also uses social networks such as Facebook. However, it by no means confines its activities to the internet and other modern communication technologies, but also, for example, holds committee hearings outside the capital and cooperates with selected consortia and institutions in its publicity work.

The status and performance of the system is continuously monitored, including with the aid of academic evaluations, and continual efforts are made to identify and implement further improvements.

D. UNITED STATES

The United States' petition system is characterized as a "minimal approach" in Section V, "Conclusions and Recommendations" because there are few regulations governing petitions. United States law guarantees citizens and groups the right to express their views and opinions about policies and procedures by petitioning the government without fear of reprisals. However, except for protections against Strategic Lawsuits Against Public Participation (SLAPPs) -- suits filed against citizens for exercising their right to speak out about a range of public matters – the procedures for filing petition is not codified in law. Courts issue judgements in such cases and obligate the parties, including government entities to comply with their rulings. **The government is under no formal obligation to respond to petitions except when the complaint expressed in a petition takes the form of formal litigation in courts.**

The gathering of signatures and delivery of a petition to courts or individual judges is possible and not infringed. However, given that United States judges are required by judicial ethics laws and regulations to consider only the facts and law presented as part of a particular case, petitions are typically not taken into consideration in any formal sense by courts. For example, as noted by an analyst at the U.S. based National Center for State Courts, a "million people can sign a petition asking for a state supreme court to rule one way or the other on a particular

case, but judges are oath-bound to only consider the evidence, law, and facts in cases before them."[26]

1. LEGAL PROVISIONS

As noted in the Introduction, the right to petition is guaranteed in the "petitions" section of the First Amendment of the Constitution of the United States of 1789, commonly referred to as the "Petition Clause." It states that people have the right to appeal to the government in favor of or against policies that affect them or about which they feel strongly: "Congress shall make no law … abridging … the right of the people … to petition the Government for a redress of grievances." The right includes the right to gather signatures in support of a cause and to lobby legislative bodies for or against legislation.

Petitioning can be any legal means of encouraging or disapproving government action, whether directed to the judicial, executive or legislative branch. It is defined as any "nonviolent, legal means of encouraging or disapproving government action, *whether directed to the judicial, executive or legislative branch*. Lobbying, letter-writing, e-mail campaigns, testifying before tribunals, filing lawsuits, supporting referenda, collecting signatures for ballot initiatives, peaceful protests and picketing: all public articulation of issues, complaints and interests designed to spur government action qualifies under the petition clause, even if the activities partake of other First Amendment freedoms" (*italics added for emphasis*).[27]

The right to petition originally applied only to the United States federal legislature, Congress, and the Federal Courts. The right today is today expanded, incorporating all fifty state and federal courts and legislatures, and the executive branches of the state and federal governments. The Constitution of the State of California, Article 1, sec. 3 (a), for example, provides that "people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good." Like most states, California joins the right to assemble with the right to petition in its declaration of rights.

Generally, the Federal and State **justice systems rarely consider the petition provisions separate and apart from the other means, invoking the right to petition only peripherally**. Freedom of expression, the protections of political speech and association, and the right to assembly are invoked in cases involving issues such lobbying, the right to file suit, libel actions involving government officials, and in Strategic Lawsuits Against Public Participation (SLAPPs),

[26] William Raferty, Analyst, National Center for State Courts, personal communication, November 3, 2015.
[27] First Amendment Center. Accessed November 2, 2015 http://www.firstamendmentcenter.org/petition-overview.

suits filed against reprisals of citizens exercising their right to speak out about a range of public matters before city councils, county commissions, school boards and other agencies.[28]

The right to petition invoked in these issues and legal cases is controversial in the United States, illustrating how the implementation of the right to petition – as a law on the books if not in practice -- can surface political and ideological issues that are far from settled. For example, in 2007, the United Senate considered a broad "ethics reform" bill, the Honest Leadership and Open Government Act of 2007, that provided, in part, for "grassroots lobbying" consistent with the aims of the established right to petition. [29] The provision highlights ongoing debate and conflicts between those who favor greater restrictions on citizen's attempts to influence or "lobby" policymakers, and others who argue that such restrictions infringe on the constitutionally protected right to sue the government, and otherwise make the people's voices heard by government. Another controversial bill would require that over 8,000 federal executive branch officials to report into a public database all significant contacts from persons – petitions, emails, letters, phone messages, and faxes -- other than government officials. Beyond the reporting burden this might place on government officials, opponents view this bill as an infringement on the right to petition because it requires their views on controversial matters to become a matter of public record.[30]

The right to petition in the United States requires only that the state receive complaints and grievances, not that it responds to them. As noted by the First Amendment Center, direct appeal and individualized response of the past when leaders knew petitioners by name is long gone. Today, no branch of the government has the capacity to provide such personal attention.[31]

Except for the federal executive e-petition system (see next section) the petition process in the United States is not regulated or overseen by government. There are no provisions for collection of data on the number and nature of petitions filed in the United States such as the provision in Article 24 of Uzbek Petitions Law obligating state authorities considering petitions to compile data on the petition process.

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[28] First Amendment Center, supra note 26.
[29] This bill was enacted after being signed by the President on September 14, 2007. GovTrack. Accessed November 2, 2015 https://www.govtrack.us/congress/bills/110/s1.
[30] Executive Branch Reform Act, H.R. 984.
[31] First Amendment Center, supra note 26.

The online petition format makes it easy for people to make a petition for any cause, at any time, directed at anyone or any entity. For the most part, in the United States the petitioning process – including on-line assistance -- is organized by private and non-profit groups for lobbying and profit interests that may align with individuals' right to petition. For example, a non-profit interest group may solicit signatures for a petition to the government and, at the same time as part of the solicitation, seek donations to the interest group.

Many citizens and groups take part in the petition process in the United States for issues such as social security, ethics, health care, political campaigning, and immigration reform. Much like in the other countries studied, most petitions call for legislation and directed at members of Congress or state legislatures. For example, AARP, Inc., formerly the American Association of Retired Persons, is a United States-based membership and interest group for people age 50 and over. It operates as a non-profit advocate for its members and is one of the most powerful lobbying groups in the United States. AARP regularly petitions members of the United States Congress and representative in state legislatures. In April this year, AARP volunteers and staff delivered petitions containing more than 26,000 signatures at the United States Department of Labor in support of a conflict of interest in retirement advice, following the release of a proposed rule by the Department of Labor.[32] Over the last few years, AARP has delivered petitions with millions of signatures focused on numerous issues.

Web initiatives featuring online petitions such as Change.org, Avaaz.org, and 38 Degrees, are growing in popularity and possible political impact. In an article on September 2, 2010, the *Economist* noted that Avaaz.org had some "spectacular success."

2. E-PETITON SYSTEM IN THE EXECUTIVE BRANCH

For a long time, people in the United States have signed petitions every day in order to give voice to their concerns and to communicate their feeling on certain topics to their government. As noted above, they have done so without government involvement or intervention except when the right is infringed and winds up in litigation in the courts. Like in Germany and the United Kingdom, Internet technology has enabled an e-petition process in the executive branch.

"We the People" is a section of the United States President Obama's Administration's website[33] launched September 2011 for petitioning the administration's policy experts. Petitions can be

[32] Mark Hornbeck, "AARP volunteers hit Capitol Hill, deliver petitions." AARP. Accessed November 28, 2015 http://states.aarp.org/aarp-volunteers-hit-capitol-hill-deliver-petitions/#sthash.pqEIuAAs.dpuf.
[33] Accessed November 3, 2015 https://petitions.whitehouse.gov/.

created, hosted, and signed by supporting signatories online. Petitions that meet a certain threshold or quorum of signatures (e.g., 100,000 signatures in 30 days) are promised review by officials in the Administration and official responses are then issued, but not always. Criminal justice proceedings in the United States are not subject to White House website petitions. Media accounts of petitions left unanswered for over six months despite having met the signature goals have led to assessment that "We the People" is no more than a public relations device which permits citizens to express themselves.

The "most recent petitions" listed on the White House e-petition website accessed on December 1, 2015 filtered by the issue of "Criminal Justice and Law Enforcement" reveals only six petitions seeking: to place a moratorium on all refugee resettlement from the Middle East in the wake of the Paris attacks; launch an independent investigation into the death of an individual while in the custody of police; launch an independent investigation into the death of a soldier; pardon an individual; and adjust the First Amendment to the United States Constitution. Much like the petitions in the United Kingdom that might conceivably be directed at the courts, none of the six most recent petitions on the White House e-petition site are likely to be directed to the judiciary as a competent body to respond. Moreover, the number of supporting signatories ranging from a low of 207 to a high of 12,258 are likely to get the attention of the White House for a response.

3. CONDUCT OF JUDGES

Though not construed as petition processes *per se,* there are several ways the citizens in most of the 50 states of the United States can register their disapproval of individual judges:

- *Election and re-election***:** the majority of judges and clerks of courts of the 50 states are *elected.* If there is a grievance against a particular judge or clerk of the court, the public simply can vote them out office at the end of their term.
- *Recall election***:** though more limited, several states including California, allows for judges and clerks to be removed from office in the middle of a term.
- *Judicial disciplinary or conduct commissions***:** Every state allows for their judicial disciplinary or commission to recommend to the state's supreme court or court of last resort that a judge be reprimanded, suspended, or even removed from office for

misconduct. The state supreme court or court of last resort in every state has the power to reprimand, suspend, and remove in this fashion.

- *Impeachment:* the legislatures of all 50 states have to power to remove a judge from office for misconduct as well, however this is typically exercised in the rarest of cases such as accusations the judge has engaged in criminal activity.

In the cases of actions of judicial disciplinary or conduct commissions and impeachment, the basis for removal is misconduct. If the grievance is that a party to a case simply disagrees with a judge's decisions neither approach is applicable.

For Federal courts, under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-364, any person alleging that a Federal judge has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts, or that a judge cannot discharge all the duties of the office because of physical or mental disability, may file a complaint with the clerk of the court of appeals for the circuit in which the judge holds office or, if the judge serves on a national court, with the office specified in that court's rules. The complaint must concern the actions or capacity of a circuit judge, a district judge, a bankruptcy judge, a magistrate judge, or a judge of a court specified in 28 U.S.C. § 363.

Of the total of 1,364 complaints filed in 2012, nearly half of the complainants (48 percent) were prison inmates, and almost the same percentage (47 percent) were litigants. Fifty-nine percent of the complaints were made against district judges, 21 percent against circuit judges, 17 percent against magistrate judges, and 3 percent against bankruptcy judges. Most allegations in the complaints fell in the categories of erroneous decision (833), other misconduct (382), violations of other standards (287), personal bias against the litigant or attorney (258), and racial, religious, or ethnic bias (144).[34]

The United States stands apart from most countries with **a robustly independent judiciary that is averse to the executive and legislative branches meddling in its affairs.** This independence is evident in the judiciary's hand in responding to the misconduct of judges. The gathering of signatures and delivery to an executive or legislative agency of a list of grievances against a court can be done, but unless the grievance relates to accusations of criminal conduct by the court or judicial officer the power of the legislature or the executive is limited. They can review and inspect a court and recommend or enact changes to how the court operates and functions

[34] United States Courts. Accessed November 3, 2015 http://www.uscourts.gov/statistics-reports/complaints-against-judges-judicial-business-2012.

(for example, providing more resources, auditing financial statements, and restructuring the court) but they cannot act against a particular judge(s) for their actions or decisions.

E. AUSTRALIA[35]

Like in other countries, a petition in Australia basically is a citizen's request for action by the government. The right to petition Australia's Federal Parliament is a long-established fundamental right of citizens of Australia and it is **the only way an individual can directly place their grievances before Parliament** — all other processes entail communicating through intermediaries -- a parliamentary representative (Member or Senator) or a parliamentary committee.

The House of Representatives has a **Standing Committee on Petitions** which receives and processes petitions on behalf of the House. Individual or public grievance may be received by the House provided they relate to matters on which the House has the power to act. Hundreds of petitions are received by the House every year on a variety of matters.

Between 1901 and 2007, a total of only 50,045 petitions were lodged in the House. The highest volume of petitions was in the 1970s and 1980s. The lowest was between 1975 and 1989, with an average of 2,357 petition per year over that 15 year period. By the 1990s, petitioning the House of Representatives reached its lowest point in terms of volume of petitions with the highest number of presentations in the period 1990 to 2007 reaching 843, the lowest 232 (House of Representatives Standing Committee on Petitions, 2013, 2).

In 2007 the House of Representatives concluded that its long-standing petitioning practices no longer best served the way citizens engaged with parliament (House of Representatives Standing Committee on Petitions, 2013, 2-3). It asserted that petitioning the House of Representatives should be based on six fundamental principles:

1) petitions belong to the public; they are the most direct form of communication between the public and the House;
2) petitions sent to the House should be addressed by the House;

[35]The description of Australia's petitioning process here draws liberally from the very detailed and readable information on the website of the Parliament of Australia, Infosheet 11 – Petitions. Accessed November 7, 2015 http://www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/00_-_Infosheets/Infosheet_11_-_Petitions, and the House of Representative's Petitions web site http://www.aph.gov.au/house/petitions.

3) governments should respond;
4) members' involvement should be enhanced and streamlined;
5) rules should be relevant and fair; preparing a petition should not be excessively difficult and the rules governing petitions should not prove unnecessarily onerous; and
6) **information technologies should be used more effectively**.

In relation to the last principle, the House noted that it was **important to embrace new information technologies to provide people with an alternative to paper-based petitioning**. It proceeded toward the establishment of electronic petitioning.

1. INITIATION OF THE PETITON PROCESS

Basically a request for action, the subject of a petition must be a matter on which the House has the power to act; that is, it must be a Federal (nationally controlled) rather than a state or local matter and one involving legislation or government administration. A petition must state the reasons for petitioning and a request for action. For example, a petition may ask the House to introduce legislation, to repeal or change existing legislation, to take action for a certain purpose, or for the benefit of particular people. Less commonly, a petition from an individual citizen may seek the redress of a personal grievance, for example, the correction of an administrative error.

Properly written petitions require a principal petitioner (even when a group of people sponsor a petition). A person who initiates, sponsors or organizes a petition, must provide his or her original handwritten signature along with full contact details on the first page of the petition. This will enable the Petitions Committee (see further below) to contact him or her regarding any response or follow-up to the petition. Contact details are for the use of the Petitions Committee and are not be published. It is not possible for a Member of the House of Representatives to be a principal petitioner or to sign a petition. **Petitions must be written on paper with original signatures.**

What must be in a petition in Australia? To be presented to the House, a petition must:

- be addressed to the House of Representatives, not to another body or persons
- refer to a matter on which the House has the power to act, that is, a Commonwealth legislative or administrative matter
- state the full terms of the petition (the facts or reasons for the petition and the specific action requested)

- contain a request for action by the House

Detailed instructions about what a petition must contain and how it should be prepared, including an instructional video, are on the House of Representative's Petitions website, as well as a recommended sample format.[36] The Petitions Committee encourages petitioners to submit their draft petition to the Petitions Committee Secretariat to check.

2. RECEIPT, PROCESSING, AND PUBICATION OF PETTIONS

The House does not yet accept petitions in electronic form. At present, petitions must be on paper with original signatures. They can be mailed to the Petitions Committee or petitioners may ask any Member, including a Minister, to present a petition in person. In both cases, the Petitions Committee must check that petitions are 'in order' (comply with the rules for petitions) before presentation.

The role of the Petitions Committee is to receive and process petitions and to inquire into and report to the House on any matters relating to petitions and the petitions system. Petitions are usually presented on Mondays by the Chair of the Petitions Committee. The Chair announces the subject of the petition and the number of signatories to each petition. If a Member wishes to present a petition in person, there are a number of opportunities for this, including the time for Members' statements, adjournment debate, and a grievance debate.

Petitions presented to the House are received by the House and become part of the records of the House. At the time of presentation, no discussion of the subject matter of a petition takes place (other than the Member's statement if it is presented personally). After a petition has been announced in the House, the **full terms of the petition (but not the signatures) are printed in the Hansard[37] for that day. They are also published on the Petitions Committee's webpage.** The Committee may forward the terms of the petition to the Minister responsible for the administration of the matter raised in the petition. Responses to petitions are also announced in the House, printed in Hansard, and are published on the Committee's webpage.

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[36] http://www.aph.gov.au/house/petitions.

[37] Hansard incudes the edited transcripts of debates in the Senate, House of Representatives, Federation Chamber and parliamentary committees. They are published shortly after the chamber or committee proceedings have concluded. See Hansard. Accessed November 7, 2015 http://www.aph.gov.au/Parliamentary_Business/Hansard/Search?q=&expand=true&drvH=0&drt=2&pnu=44&pnuH=44&pi=0&pv=&chi=2&coi=0.

3. RESPONSES TO PETITIONS

The Petitions Committee may decide to hold discussions with the principal petitioner and government officials on the subject of the petition, at its discretion. The Petitions Committee holds public hearings on a regular basis to provide an opportunity for participants to cover in more detail the issues raised in petitions. These hearings also allow the Committee to hear about people's experience of engaging with the House of Representatives' petitions process. The Committee does not make recommendations on, or implement, any actions requested in petitions. If a petition is deemed to have met submission requirements by the Committee, it will be presented to the House and referred to the relevant Government Minister for response. When the Minister has responded, the Committee will consider the response, **the response will be presented and recorded in Hansard and then the response will be sent to the principal petitioner.** The table below shows the petitioning activity for the House of Representatives from 2010 to October 22, 2015.[38]

Australia House of Representatives Petitions Presented from 2010 through October 22, 2015

Year	Number of Petitions	Signatories	Government Responses
2010	136	253,476	80
2011	195	704,954	136
2012	120	241,587	83
2013	104	237,020	73
2014	104	1,440,270	67
2015	86	195,967	70

Source: Chamber Research Office, House of Representatives. Accessed December 1. 2015 file:///C:/Users/Ingo/Downloads/petitions%20statistics.pdf.

[38] Unfortunately, no detailed information on the nature or subject matter category of petitions could be located.

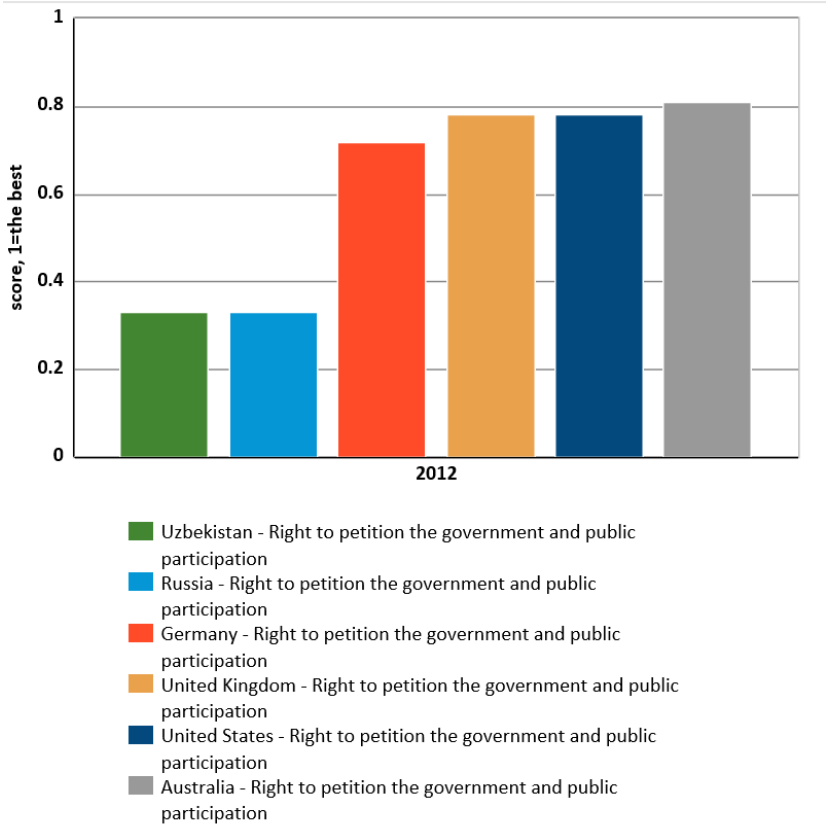
IV. COMPARATIVE ANALYSIS OF LAWS AND PROVISIONS OF THE RIGHT TO PETITION

This section presents two views – one brief and another more detailed - of the petition systems in the countries studied. The first, independent of the analysis commissioned by ROLP, is a quick overview using an index of the World Justice Project – the *WJP Rule of Law Index*™ -- to compare the right to petition in Uzbekistan against that in Russia, Germany, the United Kingdom, the United States, and Australia. The second view is based on the ROLP-commissioned analysis by the Independent Consultant that is the bulk of this report.

A. THE WORLD JUSTICE PROJECT'S INDEX OF THE RIGHT TO PETITON

The figure below[39] compares Uzbekistan in 2012 against the five comparison countries on the

The Right to Petition and Public Participation



[39] Source: World Justice Project Rule of Law Index, 2012. Original data: http://worldjusticeproject.org/rule-of-law-index/ Uploaded by Knoema.

World Justice Project's *WJP Rule of Law Index™* sub-factor "right to petition and public participation." The measure not only looks at the petitioning process of a country, but also other factors such as people's ability to gather with others, hold peaceful demonstrations, as well as the sufficiency of information and notice about decisions affecting the community, opportunity for citizen feedback. The World Justice Project 2012 dataset presents the factor and sub-factor scores for 96 countries and one jurisdiction included in the 2012 administration of the Index. For the Index, "1" signifies the highest score and "0" the lowest.

The scores for the six countries clearly fall into two distinct clusters, with Uzbekistan and Russia, both with a score of 0.33 in one cluster, and Germany (0.72), United Kingdom (0.78), United States (0.78), and Australia (.81) in the other cluster. These scores place Germany, the United Kingdom, the United States, Australia, among the higher ranked countries, and Russia and Uzbekistan among the lower ranked ones in the world. In the 2014 administration of the *WJP Rule of Law Index*™ (World Justice Project, 2014), the scores and rankings of the six countries remain relatively unchanged with Uzbekistan (0.28) and Russia (0.28) again in the lower cluster, and Germany (0.72), United Kingdom (0.77), United States (0.71), and Australia (0.69) in the higher cluster. If nothing else, the high scores of Germany, the United Kingdom, and Australia justify the selection of these countries to serve as models or references for Uzbekistan (see Section V, "Conclusions and Recommendations").[40]

It is important to note the caveat that global indexes such as the World Justice Project's *WJP Rule of Law Index*™ offer useful snapshots of the quality of governance including the "right to petition and public participation." However, while such indexes are helpful in taking the "temperature" of the rule of law or justice in countries studied, and successful in getting people's attention by "naming, shaming and praising" the countries rated and ranked, such global indicators are not actionable, i.e., they are not well suited for identifying specific improvement strategies and active management by the justice institutions and justice systems in the ranked countries (Keilitz, 2015).

[40] In the latest 2015 administration of the Index (World Justice Project, 2015), the and comparative rankings are less helpful and arguably not appropriate for purpose of this report. The previously named "right to petition the government and public participation" in the 2012 and 2014 administration of the Index, was broadened in 2015 and named "civic participation." The measure now includes survey questions on the freedom of opinion and expression, and the freedom of assembly and association. Also, the category "complaint mechanisms" was introduced as a separate sub-factor and measuring whether people are able to bring specific complaints to the government about the provision of public services or the performance of government officials.

B. SALIENT FEATURES OF THE PETITONING PROCESSES OF RUSSIA, GERMANY, UNITED KINGDOM, UNITED STATES AND AUSTRALIA

The table below makes comparisons of the five countries on the dimensions and factors identified as relevant to the goals and objectives of the right to petition and the unique and distinctive features of the petitioning process of the countries identified in the previous section of this report including: (1) governance and regulatory control by government; (2) the availability of e-petitioning; (3) the reviewing entity responsible for receiving and considering petitions; (4) whether the review of the petition is mandatory, voluntary or discretionary; (5) provisions for supporting signatories; (6) the openness and transparency of the petitioning process; (7) specified timeframes for the petitioning process; and (8) monitoring and evaluation of the petitioning process.

Features	Russia	Germany	United Kingdom	United States	Australia
Governance and Regulatory Control	Yes	Yes	Yes	No	Yes
E-Petition	No	Yes	Yes	Yes, limited	Yes, limited
Reviewing Entity	Unspecified	Petition Committee	Member of Parliament	Various, unspecified	Petition Committee
Mandatory or Voluntary Review	Mandatory	Generally mandatory	Discretionary	Voluntary	Mandatory in practice
Signatories	Allowed, no limit	Allowed with quorum	Allowed, no limit	Allowed, no limit	Allowed, no limit
Openness and Transparency	No	Yes	Yes	Not applicable	Yes
Timeframes	Yes	Limited	No	No	No
Monitoring and Evaluation	No	Yes	Limited	No	Yes

1. GOVERNANCE AND REGULATORY CONTROL

The United States is the only country among the five in which the government exercises little or no control over the petitioning process, an approach characterized as a “minimal approach.” Except for the President’s “We the People” petition platform, which has been characterized more as a public relations device, the exercise of the right to petition is not positioned in a

particular government branch or traditional function. Petitioning by privates sector and non-profit groups and organizations is widespread. Regulations are virtually nonexistent and the law is permissive. Petitioning occurs without government involvement or intervention except when the right to petition is infringed and winds up in litigation in the courts (e.g., an agency is subject to a class action lawsuit).

In Russia, Germany, the United Kingdom, and Australia, the petitioning process is highly regulated and controlled. The regulation and control of the petitioning process in Russia is largely behind the scenes for citizens and petitioners whereas, in contrast, regulation and control in Germany, the United Kingdom, and especially in Australia, it is open, transparent and well publicized (see Section 6, "Openness and Transparency," below).

The right to petition the governments in Germany, the United Kingdom, Australia and, arguably the United States, is mostly understood as part of the governments' parliamentary or legislative oversight and control functions, as it is in most countries of the world that provide for the right to petition.

2. E-PETITONS

E-petition systems are in place in Germany and in the United Kingdom (Scotland). With the exception noted above, there are no formal government-based complete e-petition systems in place in Russia, the United States, and Australia, though Australia is likely to develop its partial one in the near future. Russian law provides for electronic submissions and responses but the procedures for sending, receiving, and considering electronic appeals are not specified.

In Australia, petitions must be on paper with original signatures, though the full terms of the petition (but not the signatures) are printed in the Hansard, an electronic documentation service. They are also published on the Petitions Committee's webpage.

In Germany today, both at the national and in the majority of states at the subnational level, petitions submitted to the government can be submitted electronically by e-petition. As described by Riehm et al. (2015, 26), at the national level, the German petitioning system is unique and may serve well as a model for those countries wanting to expand their internet-based petition services.

Tiburcio (2015, 25-29) identified the functional requirements of effective e-petitioning systems including: (a) submission of petitions (and signatures) via e-mail or an online "e-form"; (b) the petition text is published on the Internet; (c) information on the stage of the petition process is made available online; (d) online publication of documents produced during the petition

process; (e) e-features for all petitions; and (f) online discussions. While there are variations, Germany and the United Kingdom (Scotland) have most of these functionalities. For example, Scotland publishes petitions on the Internet regardless of how they have been submitted (i.e., conventional means, such as paper form, or electronic means). In Germany, only petitions accepted as "Public Petitions" are published.

Generally, the provision of information about petitions and the petitioning process to the general public through the Internet opens up the process, allowing citizens to follow any petition they want, permitting petitioners to exchange views, enabling them to gather support and draw public attention, including of the media, to the issues raised, thereby allowing public scrutiny. As noted by Tiburcio (2015, 27), this "profound change in the nature of petitions system strongly enhances the achievement of many of its goals."

3. REVIEWING ENTITY

As noted above, the right to petition the governments in Germany, the United Kingdom, and Australia is clearly understood as part of the governments' traditional parliamentary or legislative oversight and control functions. The reviewing entity is part of parliament or the legislature. In the United Kingdom and the United States, the executive has also introduced petitioning. There is no evidence in these countries, or others throughout the world, of courts or other judicial branch entities assuming responsibility for receiving and considering petitions. Moreover, petitions lodging grievances about courts or the judicial process are relatively rare.

Direct access by citizens to the right to petition is aligned with the values of open government, civic participation, accountability and transparency. Petition committees are the reviewing entity whereby citizens have direct access to petitions in Germany and Australia. No specific reviewing entity is specified in Russia and United States but, presumably, citizens have access to all government authorities.

In contrast, in England adheres to what is characterized as a "sponsorship model" or "MP filter." Petitions cannot be submitted to the Westminster Parliament directly by citizens but must be made through the intermediary of elected members of the parliament. This means that a petitioner must first have access to a member of parliament (MP) – typically, the petitioner's local MP – who can then bring the petition before Parliament. Petitions are forwarded by the MP to the relevant special committees and ministries of the executive branch. The special committees are obliged to include the petitions on their agenda, though ministries are only obligated to respond to "substantial petitions." This conditional procedure

requiring that a petition be sponsored by an intermediary introduces discretion into the consideration of a petition.

4. MANDATORY OR VOLUNTARY REVIEW

A criterion for evaluating the effectiveness of a formal petition system is the existence of a right to a response. In other words, is a response to a petition mandatory? If not, the force of a petition would be no more than a written letter.

In Russia, review of a petition (called an "appeal") is mandatory except if it contains offensive language, or threatens life, health or property, in which case the appeal can remain unanswered and the appellant informed accordingly. In Germany, e-petitions are subject to screening before their online postings. The process for verifying the admissibility of e-petitions is governed by special rules including admissibility criteria. The screening has been criticized for its perceived low acceptance rate, though the low rate may be explainable by legitimate reasons (e.g., submission of duplicate petitions, petitions deemed unsuitable for debate in public, petitions judged to be evidently unsuccessful or considered as not pertinent or based on false assumptions, petitions not accepted because they concerned personal requests and complaints, and petitions deemed to imperil "social peace," or otherwise could have a negative effect on international relations.) In any event, petitions that are not accepted as e-petitions are handled following the conventional non-public procedure. As noted above, the petitions in England are subject to the "MP filter" or "sponsorship model" and, therefore, responses are discretionary.

In the United States, the government is under no obligation to respond to petitions *per se,* except when the complaint expressed in a petition takes the form of a dispute resolution by courts. In Australia, since 2008, an average of140 petitions have been presented each year and almost all petitions presented have been referred to ministers and received responses.

5. SUPPORTING SIGNATORIES

All five countries allow supporting signatories for petitions. Related to the question of whether a response to a petition is mandatory or voluntary, is the issue of a threshold or required quorum of signatories a petition must reach before it is considered. It could be argued that the higher the threshold or quorum, the greater the obstacles of citizens to give voice to their concerns and the less likely they are to get a response. A total of 50,000 signature threshold is required by the German Petitions Committee to arrange a public hearing. On the one hand, it could be argued that the lack of thresholds in Scotland promotes the effectiveness of the petition system. Tiburcio (2015, 25), on the other hand, argues that thresholds can have

positive effects such as the certainty that a required threshold of supporting signatories will trigger a response.

Assessing whether a threshold or quorum of supporting signatories should be established boils down to a practical issue of capacity. Paper petitions submitted with original signatures in only the hundreds per year, the case in Australia, can be handled without a threshold. The volume of petitions and the ease of attracting supporting signatories in e-petitions may make thresholds practically necessary. In Germany, after publication of a petition online, supportive signatures can be added to the petition within six weeks, and it can be debated in an online forum. Though three million signatures have been collected for about 2,100 e-petitions since 2005, not many have gotten many supporting signatures. The average number of signatures per petition was about 1,170 for the period 2005 to 2010, with 85% of all petitions receiving fewer than 1,000 signatures; only nine (0.4%) received more than 50,000 online signatures within the six week time limit.

6. OPENNESS AND TRANSPARENCY

Much like voter election systems, doubts about which might erode public trust and confidence in its legitimacy,[41] petition systems can be differentiated by their openness and transparency, by the level of information provided to petitioners, signatories, and the public about the petition process including: the main steps taken during the course of the process, such as decisions on admissibility, the stage of the petitioning process, questions to the executive and responses, and final decisions. The systems in Scotland, Germany, and Australia are relatively open and transparent, while petitioning in England and the United States less so, with the Russian system appearing much more closed and opaque.

The Scottish petition system provides for the publication on the Internet of information about the entire petition process – the stage reached, steps yet to be taken until the final decision, and critical dates. As summarized in the previous section, petitions submitted by e-mail or by regular mail are published on the Internet and their consideration can be followed and monitored on the Scottish Parliament website. In addition to instructions for submitting petitions online, information related to the petition process is available online on the Scottish Parliament's website, including the number of supporting signatures, documents related to the

[41] Barnes and Kaase (1979) distinguish conventional from unconventional civic participation. Conventional or institutional forms of participation include more formal and politicized participation, such as voting or contacting a politician. Unconventional or non-institutional participation, on the other hand, is characterized by its informality and scarce regulation, occurring outside the institutional framework.

petition, as well as the minutes of meetings in which the petition is discussed. The site also includes a wide variety of information material, such as text, brochures and animated videos, available in several languages explaining how the petition system works, from submission to consideration to the final decision. Functions of the e-petition platform include the possibility to table petitions or sign already tabled petitions on-line, as well as to hold on-line discussions on the petitions. Debates and hearings of the petitioners also can be viewed on the Internet.

Similarly, in Germany, "Public Petitions," as distinguished from conventional hand-written petitions, can be viewed on government websites. An individual can add his or her name in support of any petition, and can discuss a petition in an online forum. Petitioners can be invited to attend public sessions of the Petitions Committee to present their matter personally before the Committee.

Though not an e-petition system, Australia's petition system is very transparent. Detailed instructions about what a petition must contain and how it should be prepared, including an instructional video, are on the House of Representative's Petitions website, as well as a recommended sample format. The complete terms of the petition (but not the signatures) are printed in Hansard, a documentation service. They are also published on the Petitions Committee's webpage.

7. TIMEFRAMES

Certainty -- petitioners knowing what will happen when -- is a value related to openness and transparency of a petition system. Most of the systems do not provide any legal deadline for the government to respond. Russia is the exception. According to law, similar to provisions for timeframes in the Uzbek Petitions Law,[42] appeals (petitions} must be registered within three days of receipts by state body, local government, or officials, and considered within 30 days from the date of registration.

In Germany, the only timeframes governing the petition process relate to the posting of supporting signatures on e-petitions. After publication of a petition online, supportive signatures can be added to the petition within six weeks.

[42] Chapter 3, "Provisions of Filing Petitions and Their Consideration," provides for the consideration and resolution of the issues raised in the petition on the merits within 15 days of receipt, or a month when there are requests for additional information. Other provisions include interim timeframes and deadlines for consideration of petitions including transfers (no more than five days after receipt) of petitions for resolution to state agencies with authority over issues e petition, receipt of requested additional information from state authorities (ten days or up to a month).

8. MONITORING AND EVALUATION

Uzbekistan's Petitions Law requires (Article 24) that at least once a year state authorities summarize and analyze petitions with the aim to "identify and eliminate the causes of violations of the rights, freedoms and lawful interests of physical bodies and legal entities, as well as the interests of society and the state." This seems to be occurring in varying degrees in the five comparison countries.

Not unlike other areas of justice and the rule of law (Keilitz, 2015), there is little evidence of regular and continuous government-sponsored performance measurement and management of the petition systems in the countries studied, though the e-petition processes and online postings of results have allowed public scrutiny and assessments of the volume of petitions and signatories in Germany, the United Kingdom, and Australia by researchers and program evaluators (Tiburcio, 2015; Riehm, Böhle and Linder, 2014). There seem to be no readily available data on the volume of appeals in Russia and evaluations of its performance.

V. CONCLUSIONS AND RECOMMENDATIONS

The objective of the study upon which this report is based is to help the ROLP, its partner the Supreme Court of the Republic of Uzbekistan and, as appropriate, other justice sector stakeholders to gain a better understanding of the different petition systems in five countries and to identify good international practices that might serve as models or references for the Uzbek Judiciary's effective implementation of the Petitions Law. The central question addressed by this report is who, how, and by what processes, mechanisms, capacities and organizational infrastructures should the courts and justices system of Republic of Uzbekistan respond to petitions in compliance with the Petitions Law.

The overarching answer to this central question is this: The right to petition the governments in Germany, the United Kingdom, and Australia is clearly understood as part of the governments' traditional parliamentary or legislative oversight and control functions. The government entities responsible for receiving and responding to petitions are part of the parliament or the legislature in these countries. Even in the United States, where the administration of petitions is handled by non-governmental entities, the remedies sought are typically actions of the legislative branch. **There is no precedence in these countries, or others throughout the world,[43] for courts or other judicial branch entities to assume direct responsibility for the administration of petitions. Justice institutions, much like ministries and departments in the executive branch such as education, health, and welfare, routinely will be called upon to assist in the responses to petitions. However, petitions lodging grievances about courts or the judicial process are relatively rare. Therefore, ROLP, the Supreme Court, and other stakeholders are well advised to exercise caution before placing the justice system into the position of the central responsibility for implementing the right to petition provided in the Petitions Law.** As noted in the preceding sections of this report and discussed further below, doing so is likely to be fraught with conceptual, organizational, and operational difficulties for which there is little or no guidance in international practice.

With that caution given due consideration and deliberation, ROLP, its partner the Supreme Court, and other justice sector stakeholders seeking to implement the Petitions Law should consider the petition systems in Scotland, Germany, and Australia as sound models and references of good international practices. There is much to like in the Scottish and German e-

[43] To the best of the Independent Consultant's knowledge and with the exception other mechanisms which directly joins the public with the judiciary such as class action suits and public interest litigation (PIL). See supra note 7.

petition systems. The systems meet the aims and broad goals of transparency, equality and inclusion (access), engagement of citizens and legal entities in public affairs (*res publica*), consideration and discussion of submitted petitions, and information about and accountability for government responses. Although not a full-fledged e-petition system, the Australian system, too, has much to admire in its simplicity, openness and transparency. The Scottish, German, and Australian systems seem to work and, generally, work well. Their shortcomings are evident and are pointed out in this report or in references (e.g., Germany's e-petition system and conventional system are not well integrated).

A. THRESHOLD GOVERNANCE ISSUES

At the outset and before the ROLP and its partners actually embark on the implementation of the Petitions Law, they would be well served by addressing a number threshold governance issues by considering the United States' petition system and that of Russia -- what I characterize as a "minimal approach" and a "broad-based approach," respectively, to the governance of the petition systems.

These threshold governance issues relate to the fundamental questions raised in the Introduction of this report and go to fundamental issues of the design and governance of the petition system in Uzbekistan:

> (1) Should the scope of the right to petition or appeal be understood in terms of the entity – the parliaments or legislatures, the executive, or the judiciary -- to which petitions and appeals of citizens are addressed?
>
> (2) Specifically, should the petitioning system be understood as part of the governments' legislative oversight and control functions, as the right is understood in most parts of the world?
>
> (3) How does implementation of the Petitions Law achieve the proper balance between, on one hand, the independence of the judiciary and the separation of powers of the three branches of government and, on the other hand, the public demands on the justice system for transparency, accountability, responsiveness, and comity?
>
> (4) Will a petition process in the Judiciary align or conflict with the traditional functions of courts as prescribed by law?
>
> (5) Framed as a form of advocacy democracy that is traditionally centered in the legislative process and electoral process, how can a petition process effectively be "pushed" to the judicial branch whose very function is to resolve grievances?

These are fundamental questions of governance that are posed here and not answered beyond the overarching answer given at the beginning of this section. They are beyond the scope of the "desk review" upon which this report is based. They should be answered in Uzbekistan by ROLP and its partner, the Supreme Court, and other stakeholders in a series of deliberations. In what government body should the petition system be centered and government?

The implementation of the Petitions Law is made much more of a challenge absent a clear legislative intent and aim of Petitions Law toward a specific social goal and public policy located in function of a part of government, e.g., to give voice to people and to open the Uzbekistan's civil court system to public scrutiny, to open up an information flow of public opinion to the courts, and to increase court responsiveness to citizen feedback on civil justice administration.

In the United States federal and state systems, the "minimal approach," the right to petition is rigorously enforced and championed, but it is not governed and regulated. Courts, undoubtedly, receive petitions of all sorts but are under no obligation to build organizational structures and capacities to receive, consider, or respond to them in a regulated manner. In Russia, all government bodies and none in particular are identified for governing the right to petition, what I call the "broad-based approach." Does the "minimal approach" or the "broad based approach" to compliance with the Petitions Law have some attraction to ROLP, its partner the Supreme Court and other justice sector stakeholders?

The home-based "desk review'" conducted for this report simply is insufficient to address this question without more in-depth analysis of the Uzbek context in which the implementation of the Petitions Law would take place. This report stops at posing the issues and question, and recommending (see below) that they be addressed as a first step in developing a petition system in Uzbekistan. This independent consultant would stand ready to assist ROLP in this in-depth analysis.

The remainder of this section of the report makes the assumption that the ROLP, its partner the Supreme Court and other justice sector stakeholders, whether they favor a "minimal approach" or a "broad-based approach," will have the political will to help build a world-class e-petition system for Uzbekistan.

B. AN E-PETITION SYSTEM FOR UZBEKISTAN

The historic right to petition has remained unchanged for centuries until the last two decades, spurred by the Internet and related advances in information technology. As a basic principle, every effort should be made to ensure that all functions of the petition process are provided

both by electronic means and conventional means yet handling every petition by the same basic procedural rules. In today's world, however, it makes much sense to make e-petition the primary form of petitioning. It seems inevitable that e-petition systems that can accommodate high volumes and the many demands of effective systems related to transparency of the systems to public view and scrutiny, are the way of the future. Cost alone would make e-petition systems attractive. ROLP, its major partner, the Supreme Court, and other justice system partners are well-advised to develop an e-petition system for use as the rule, accommodating conventional written or oral appeals only as the exception, as when petitioners cannot or chose not to use an e-petition. In such cases, those responsible for receiving petitions will either help the individuals compose an e-petition or translate written or oral petitions for them.

E-petition systems have many more functionalities when compared to conventional written or oral petitioning including the ability to submit petitions by e-form on the responsible government body's website, easily allowing citizens to study petitions online and express their support for a petition (by adding their signature), even after the petition has been submitted to Parliament, as is today the case in Germany (for "Public Petitions"), and other functionalities described in the previous section of this report. The e-petition system expands the possible exercise of the right to petition, potentially reaching out to citizens who may otherwise be less inclined to institutional political participation, especially younger people, contributing to more "participation" and involvement in the political process generally.

C. RECOMMENDATIONS

Based on the foregoing conclusions, this report makes eight recommendations. The first and last recommendations below are "bookends," representing the central practical issue (What should a petition system should look like?) and the fundamental issue of governance (In what government entity, exercising its legitimate and appropriate authority, should the petition process reside?). Those in between are specific recommendations that are meant to be suggestive of the strategies the ROLP, the Supreme Court, and other stakeholders might consider in developing the petition system in Uzbekistan. Recommendation 2 and Recommendation 3 in compliance with Articles of the Petitions Law should be implemented immediately; they need not await on agree-upon plans for the entire system. Indeed, their implementation will inform those plans.

> ***Recommendation 1: Develop e-petition system.*** The Supreme Court should, in partnership with ROLP, and other stakeholder in Uzbekistan, including actors in private

and nonprofit sector, develop an e-petition system adopting or adapting the best functions of the systems in Germany, Scotland, and Australia. While it may be ideal for Uzbekistan officials to conduct study tours of these countries or engage consultants from them, this may not be necessary because information about the e-petition systems in these countries, including technical specifications and evaluations of the efficacy of the systems, is readily available, and such study tours and engagement of consultants tend to be costly and time-consuming.

The system should be fully automated from the submission of petitions via online "e-form" or email, to the automated registry and of received e-petitions in real (or near-real) time accessible to petitioners and the public, to the collection and posting of supporting signatures, to online updated information about interim decisions made as well as the status in the petition process, to online discussion forums, to final decisions made about the petition and the response of the government.

If feasible, the recommended system should be built on existing platforms.

Recommendation 2: Rigorous assessment of current volume and flow of petitions. What is the volume of petitions already received in Uzbekistan? What is their nature? To what government body and function are they directed? In what manner? What is the current frequency of petitions? How many signatories are supporting petitions? These are questions that should be answered by a thorough assessment of the current volume and flow of petitions. Reportedly, about 26, 000 petitions were received by judges, by the Citizens Petitions Department, and by registry offices in lower instances courts in 2014, a considerable number. Some statistical data on the petitions are compiled but no in-depth assessment has been made. Quite apart from its compliance with Article 24 of the Petitions Law, "Compilation and analysis of complaints," the results of this assessment will answer practical questions and help formulate processes and procedures for the petition process. For example, it will help formulate an appropriate admissibility criteria and screening procedures for what petitions should not and will not be "accepted" for further consideration (e.g., duplicate petitions, petitions deemed unsuitable for debate in public, petitions judged to be evidently unsuccessful or considered as not pertinent or based on false assumptions, petitions not accepted because they concerned personal requests and complaints, and petitions deemed to imperil "social peace," or otherwise could have a negative effect on international

relations). It will also help determine what threshold or quorum, if any, of supporting signatories would be required before a petition is given further consideration.

Recommendation 3: Information about the petitioning process should be made available on official websites. Article 8 of the Petitions Law requires that information about the petitioning process be communicated to interested parties by making the information available on "official websites" of state bodies and by other means. This should be done as soon as possible, perhaps starting with a user-friendly online brochure such as that available in Germany[44] or the video posted on the Australian website.[45] Interpreting the requirements of the law and crafting that information into easy to understand language(s) would serve as an instructive exercise for the implementation of Recommendation 1 above (e.g., the specific locations of the receptions of petitions, and the submission of petitions in electronic form by an "e-form" linked to the websites). The Uniform Resource Locator (URL) address of the website information should be communication to all official and partner websites to disseminate the information as widely as possible.

Recommendation 4: Formulate functional requirements for software development for the e-petition system. For every part of the automated system, from submission of petition to final responses to them, and for every step in between, the ROLP, the Supreme Court, and other partners should identify the functional requirements of the desired e-petition system. What precisely should the system be able to accomplish for the actors involved (petitioners, supporting signatories, government officials, discussants, and the public in general) and for the petition process (e.g., should information be available in in interactive form in real or near real time accessible by various devices including computer, tablet, and smart form on various platforms including social media)? Especially if the recommendation to start small and scale up is taken (see below), developing and/or acquiring the software to meet the functional requirements is no longer the domain of high-end programmers but can probably be accomplished by someone with only moderate programing skills.

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[44] German Bundestag online brochure describing the online e-petition process. Accessed November 5, 2015 https://www.bundestag.de/blob/189918/da128fc8e7f7339b7e3bbc57add3833a/flyer-data.pdf.
[45] http://www.aph.gov.au/house/petitions.

Recommendation 5: Start small and scale up over time. E-petition systems around the world are still in their infancy. The ROLP, the Supreme Court, and other partners are encouraged to start building the e-petition system at a small scale, manageable for making adjustments, and build the system out in terms of size, functionalities and geography over time. This will, among other things mitigate the risk of unintended consequences (see Section VI, "Opportunities and Risks for the Uzbekistan Judiciary").

Recommendation 6: Early deliberation of threshold questions and issues. In what government entity, exercising its legitimate authority, should the Uzbekistan petition system be centered? This is the fundamental and threshold question that should be addressed by ROLP, its partner the Supreme Court of the Republic of Uzbekistan, and other stakeholders, as appropriate in a series of early hearings, conferences, and other deliberations. This report should be made available to participants in these gatherings as part of the background reference materials. It should help start and shape the debate, not direct its outcome.

VI. OPPORTUNITIES AND RISKS FOR THE UZBEKISTAN JUDICIARY

For the purposes of this report, opportunities and risks are defined as threats to the success of an organization (e.g., the ROLP, its partner the Supreme Court, or other stakeholders) as a result of a social or economic development (the implementation of the Petitions Law as envisioned by the conclusions and recommendations of this report). Threats include not fully realizing opportunities that may contribute to success. *Operational* opportunities and risks are those that relate to the interests, values and actions of specific stakeholder groups and broader society through its operations. *External* opportunities and risks relate to the impact of external factors in society upon an organization's activity, the results of which may impact the organization's operations. Finally, there are *relationship* opportunities and risks when the development raises conflicting interests between an organization and its stakeholders.[46]

A. OPPORTUNITIES

Two related opportunities are identified. The first is one of attitude, perception and mental model. The second is innovation.

1. MOVING FROM "PROBLEM" TO AN ENGAGING OPPORTUNITY

The purpose of the Petitions Law, as stated in Article 1, is "to regulate the petitioning process as it is implemented by government authorities." One may easily read this terse statement of purpose as requiring an arduous and stifling task of bureaucratic compliance, i.e., a "problem" that needs to be fixed. This view would be a mistake of missing opportunities.

Instead, the ROLP, Supreme Court and other stakeholders should view the "problem" of implementation not as a problem *per se* but rather as a creative opportunity to make the government, including the courts, of Uzbekistan more transparent, open, and accessible. They should view it as invitation to innovate, to aspire to such lofty goals as improved public access to and trust in Uzbekistan's civil court system, and increased court responsiveness to citizen feedback on civil justice administration through the development of institutional mechanisms

[46] This definition of opportunity and risk assessment is adapted from The Sigma Project. *The Sigma Guidelines – Toolkit: Sigma Opportunity and Risk Guide.* Accessed November 10, 2015 http://www.projectsigma.co.uk/toolkit/sigmariskopportunity.pdf.

for public awareness raising. There is no reason to aim short of accomplishing the kind of pioneering work done by the Scottish Parliament in 1999 in its launch of its e-petition system (see Section C.3, "The Scottish Parliament Petition System").

At the same time, the implementation of the law should be seen as an opportunity to reinforce the legitimate authority of the Supreme Court's governance and superintendence of the Uzbekistan justice system.

Article 1 of Uzbekistan Petitions Law states the purpose of the law is "to *regulate* the relations in the field of petitions of physical bodies and legal entities …. in government agencies and public institutions." Conspicuously absent from this terse statement of a largely bureaucratic and administrative objective are statements of legislative intent, good public policy, lofty aspirations and strategic goals such as those of the ROLP, i.e., to strengthen public access to and trust in Uzbekistan's civil court system, and to increase court responsiveness to citizen feedback on civil justice administration through the development of institutional mechanisms for public awareness raising. The challenge of more red tape and routine – bureaucratization – is unlikely to be motivation for significant social change and broad stakeholder engagement (see Section B, "Risks," below).

2. INNOVATION

Jurisprudence around the world is deeply rooted in legal tradition and precedence. A jurist has never been considered, or is likely to be considered in the future, for a Nobel Prize for his or her innovative decisions and rulings that are "out of the box" of this tradition and precedence. Off the bench and out of the courtroom, however, the administration of justice that governs the organization, management, and operations of courts and tribunals is not, and should not, be constrained in this box. There is plenty of opportunity to innovate. Given the demands and pressures on courts today, there is a necessity to do so.

There are other ways to think about ways of implementing the Uzbekistan's new law providing for the right to petition the government for redress of grievances without fear of punishment or reprisal. One is to think in terms of opportunity for innovation that energizes parts of Uzbek society beyond the justice sector. Today there are new actors—citizen volunteers, social entrepreneurs, foundations, nonprofits, civil society organizations, and private businesses, both big and small—that collaborate with governments in finding solutions to serious social problems, thus blurring traditional divides between civic, business, and philanthropic responsibilities. Internet technology especially, and an e-petition system specifically, have the potential to attract these new actors.

The challenges and demands of the petition process begs for solutions that depend on modern information technology such as social media and mobile phone. The petition process could, for example, be accessible remotely from anywhere by mobile phone via social media (e.g., Twitter and Facebook). Completed petitions could be shared, co-signed, and considered using the same approach.

Perhaps due to their traditional adherence to principles of judicial independence and separation of powers, justice institutions and judiciaries throughout the world have tended to go solo in their justice reform efforts—independent of other branches of government and other sectors of society. By demonstrating shared responsibility and accountability for performance outcomes that address justice on a broad scale—instead of focusing on their own narrow internal organizational challenges using input and output measures of resources, activities, and operations that are often not widely understood—justice institutions and systems can create a "market" for solutions to big justice-related societal problems with actors other than justice sector insiders. There are opportunities for justice reform in an "economy of solutions."

In their 2013 book *The Solution Revolution: How Business, Government, and Social Enterprises Are Teaming Up to Solve Society's Toughest Problems*, William D. Eggers and Paul Macmillan argue that, in today's climate of fiscal constraint and political impasse, we cannot expect government alone to tackle entrenched social problems (see Keilitz, 2014). They describe what they see as an emerging solution economy in which governments collaborate with new actors outside of government in such activities as crowdsourcing, crowdfunding, ridesharing, app development, and impact investing to fight poverty, provide low-cost health care, prevent obesity, and develop renewable energy. Government, business, philanthropy, and social enterprise come together in this solution economy, blending market forces with altruism to tackle tough problems. The nontraditional, nonmonetary "currencies" that are traded in the solution economy are evidence of progress toward the solutions and the improved reputations of the problem solvers for "moving the needle on the dial." By moving away from the traditional, unilateral top-down model for delivering services, governments in this solution economy are not the sole agents of social change but, instead, act as enablers by focusing on desired social outcomes that everyone understands and values—and thus opening heretofore closed doors to many new problem solvers.

In the implementation of the Petitions Law, there is opportunity to invite these new actors to collaborate. For example, instead of the traditional government procurement process whereby a request for a proposal is issued for a project to be bid, evaluated, and executed over a period

of years, the Uzbek judiciary could a completion for a prize – a fraction of the amount in the traditional procurement – for a design of an e-petition process. The winner(s) get the prize, accrue the non-traditional currency of recognition, and get an invitation to help develop the e-petition system with ROLP and the Supreme Court. Similar approaches to justice related issues have been tried in Serbia and Liberia (Keilitz, 2014).

B. RISKS

This final section identifies five risks that should be addressed and, if possible, mitigated: (1) the petition systems imperiling social peace and other negative effects; (2) importing and transplanting "solutions" from other countries; (3) lack of access to the petition system by some groups ("the digital divide"); (4) unintended consequences; and (5) the bureaucratization and complexity. Some of these risks and opportunities overlap.

1. SHARING OF OPINIONS AND MOBILIZING ACTION USING INFORMATION TECHNOLOGY FOR "E-PROTESTS"

Information technology has spawned unprecedented social gains. IT plays an increasingly important role in communications between political institutions and the public, making those institutions more open, transparent, and accessible. The rise of social networking and its integration with e-petition systems in such web initiatives as Facebook, Change.org, Care2, Axaaz.org, GoPetitIon, to name only a few, poses potential political risks for so called "e-protest movements."

Framed as a form of "advocacy democracy," the Government of Uzbekistan and its Judiciary may well see risks in the capacity of widespread sharing of opinions and organizing action via the petitioning system, especially when the a petition platform that is based on social media and Internet technology is used in ways antagonistic to the state authorities. The prominent role of Facebook , Twitter and other social media outlets in fomenting social unrest and protest in the "Twitter Revolution" in 2009 in Moldova[47] and, beginning the following year, during the so called "Arab Spring" in such countries as Bahrain, Egypt , Jordan, Morocco, Syria, Tunisia, and Yemen have made many countries wary of the risks of social media.

The debate over breaches of sensitive data in the "Wikileaks" incidents raises other concerns about privacy and data protection. Such risks seem to be acknowledged and may be mitigated

[47] The author personally witnessed the protests first-hand on April 7, 2009, in the capital, Chisinau, where the number of protesters rose above 30,000. Rioters attacked the parliament building and presidential office, breaking windows, setting furniture on fire and stealing property.

by Article 3 of the law mandating that the right to petition should not violate the "rights, freedoms, and legitimate interests of other physical bodies and legal entities, as well as the interests of society and the state" (italics added for emphasis). Uzbekistan could also mitigate these risks by rejecting submitted petitions, as Germany has done, that are judged to imperil social peace or could have a negative effect on international relations.

2. IMPORTING AND TRANSPLANTING SOLUTIONS FROM OTHER COUNTRIES

As mentioned in the Introduction, there are risks in importing solutions from other countries and simply transplanting them in the Uzbekistan context in the absence of good evidence of their likely success. Such "solutions" simply may not take hold. Lant Pritchett, Professor of the Practice of International Development at the Kennedy School of Government at Harvard University, worries that much international aid that only "mimics" the trappings of rich countries – i.e., transplanting institutions, organizational structures, and processes that work in developed countries into environments where those transplants do not take hold – has not worked in the past and is not likely to work for a very long time (Pritchett et al. 2013; 2014). These risks can be mitigated by, first, being aware of them and, second, by developing the organization and management in stages over time and being prepared to adapt further development to unexpected results.

3. LACK OF ACCESS TO PETITION SYSTEM BY SOME GROUPS

Tiburcio (2015, 26) contends that the main risk of petitions systems concerns the goals of access, equality, and inclusion. He worries, for example, about "underrepresentation of some segments of society in the use of the right to petition, notably of those already less inclined to participate (like the poor and less educated, including in relation to digital tools)." The risk is clear in e-petition systems without traditional forms of participation (paper petitions) that cause a "digital divide" between those familiar and comfortable with Internet technology and those who are not. He believes that this risk can mitigated if there is a greater knowledge about the profile of the petitioners. "Getting to know who the petitioners are (sex, age, education, occupation, etc.), he contends is an important first step, one that could inform the means to address potential inequalities in the actual exercise of the right to petition "This can be done through a back-office in-built reporting system and by a simple questionnaire delivered to the petitioners (both for the past and for the future)."

4. UNINTENDED CONSEQUENCES

Reform, including the development and installation of a new petition system, is unlikely to proceed in a straight line. Whatever form the design, development, and installation of the Petitions Law takes, it will be "grown" in an iterative process and evolve over time. The way it will evolve is unlikely to be unidimensional and unidirectional, where one thing leads to another in linear and sequential fashion. Successful reform efforts in the justice arena are seldom if ever, the result of "conscious design" and prescriptive planning, less like a train heading down a track, and much more like a sailboat navigating through ever-changing winds and seas (Kleinfeld, 2015; Easterly, 2006, 2013). The risk of unforeseen and unintended consequences are high. This risk can be mitigated, for example, by developing the petition system in stages and phases, beginning perhaps with a limited national system centered in the Supreme Court.

5. BUREAUCRATIZATION AND COMPLEXITY

Complexity kills. This is true especially when it is developed by the excesses of bureaucratization – excessive regulation or rigid conformity to formal rules that are redundant, inefficient, and hinder or prevent productive action or decisions. Much has been written about this risk, some of it academic and theoretical, but it is easy to imagine the following scenario in the implementation of the Petitions Law: For most of its provisions in its 20 plus articles, discrete programs are financed and "specialized structural units" are established and "officials responsible" and supporting staff are hired and equipped, offices are built to house the officials, staff and equipment, policies, regulations and stifling rules written, and so forth, with little attention to coordination, performance measurement and management. I suspect most readers will nod their heads in recognition.

As recommended in the previous section of this report, whatever approach ROLP, its partner the Supreme Court, and other stakeholders chose to take in developing a petitions system, the approach should start small and simple, and scale up over time. There is no better way to stifle a new approach than to burden it with overly prescriptive bureaucracy and complexity.

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