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Law & Economics of the Human Rights to Access Justice

Edgardo Buscaglia*

ABSTRACT: This piece sheds analytical light on how when the human right of access to justice is impaired, private actors will later substitute away from the court system and seeks private dispute resolution mechanisms offered by armed groups generating violence through economic crimes. In this context, the analysis extends previous findings by providing evidence for the first time in the literature that greater diversification of economic crimes come hand in hand with more frequent provisions of "dispute resolution mechanisms" supplied by armed groups engaged in the trafficking of legal and illegal goods and services through illegal means. One of the main policy implications of this piece is that a greater compliance with the human right to access justice through a more effective judiciary represents not just a way to enhance punitive/deterrence state capacity against armed criminal enterprises but also a policy to reduce the social sphere used by armed groups as a protection strategy within the most deprived segments of the population.

Keywords: access to justice, human rights, armed groups, violence, economic crimes, dispute resolution mechanisms.

I.BACKGROUND AND INTRODUCTION

Basic democratic governance, in general, and the reduction in the levels of physical and other types of collective violence, in particular, require the provision of conflict resolution mechanisms in order for individuals to be able to redress their grievances with procedural safeguards for ensuring the exercise of basic political, civil, social, cultural and economic rights, i.e. 58 types of human rights enshrined within 16 United Nations Conventions (Buscaglia, 1994, 1997).

Access to justice through conflict resolution mechanisms is considered one of the fifty-eight human rights in accordance to the International Covenant on

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Civil and Political Rights.¹ The predictable, consistent, and coherent actual exercise of basic political, civil, and economic rights (i.e. human rights in practice and not just the scope of human rights in the books) are the sources of human security needed for social development, in general, and economic development, understood as a means of enhancing the quality of life of all segments of the population and the capacities of individuals and organizations (Hayek, 1973; Acemoglu & Robinson, 2012). In this wider human rights legal context (encompassing civil, political, social, economic and cultural rights), we need to address the much narrower improvement in the delineation and enforcement of property rights as an important precondition for economic progress within freer open societies (Buscaglia, 1994, 2001a; Buscaglia & Stephan, 2005; Capelletti, Garth, Weisner, & Koch, 1981).

This piece intends to shed light on the relative efficiency of non-state dispute resolution mechanisms offered by unarmed traditional actors and by organized armed groups generating violence through economic crimes *vis a vis* the inefficiencies caused by barriers to access the public court systems.

By design, the judicial institutions responsible for the interpretation and application of laws must be able to address the conflict resolution needs of those people who cannot find any other way to redress their grievances in an effective manner (Buscaglia, 1997). But in practice, when low-income segments of the population do not perceive legitimate and/or effective formal mechanisms to resolve their disputes either because of a weak state subject to judicial vacuums or because of a corrupt oversized state imposing complex procedures, as a reaction, non-state informal mechanisms usually develop that are either in genuine social demand or informal mechanisms develop through non state armed groups imposed upon the social fabric (Buscaglia & Ratliff, 2000).

A few of the most socially-legitimate informal mechanisms are usually not a system but a range of ad-hoc diverse frameworks seeking a blurry mix of retribution, restoration, redistribution and forward-looking consequentialism, to different degrees in each case (Pedroso & Trincão, 2008). In this context, dispute resolution is performed by one individual or several (when armed groups are involved in providing the "service") and rulings are reached with or without the consent of the victims and in all cases without best practice procedural safeguards

¹ Article 14 of the International Covenant on Civil and Political Rights ("ICCPR") guarantees the right of access to the courts. Article 14 of this Covenant states: "In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law".

(i.e. without due process, also understood as a human right in harmony with UN international conventions). Many times these mechanisms address political, economic, social, religious, and criminal issues causing disputes. Decisions or "rulings" generated by these informal mechanisms are sometimes accepted or not accepted by the community involved. A large proportion of the cases addressed by these mechanisms represent disputes linked to commercial disagreements, land use or criminal cases of theft, rapes, vandalism, or even homicides (Wojkowska, 2006). These informal mechanisms usually represent the main or only escape valve for resolving disputes among the least wealthy segments of the population in urban slums and rural jurisdictions within which the state is perceived to be ineffective, corrupt, and/or inefficient (Buscaglia, 2001b).

On the other hand, many times informal and formal dispute resolution mechanisms co-exist with judges, prosecutors, police, or governors who channel relatively complex cases to informal dispute resolution in order to ease their caseloads or simply to avoid social disruptions as a result of "bad rulings" (Buscaglia, 2001b). Yet, one way or the other, as the poorest segments of the population are marginalized and expelled by costly barriers to conflict resolution through the formal justice system and court-linked mediation and arbitration mechanisms, Buscaglia (2001a) and Sung (2004) demonstrate that low-income segments of the population show greater relative demand for informal non-state actors (Birol, 2011; Sung, 2004). Within these types of deprived segments of the populations and within this kind of dysfunctional judicial contexts characterized by lack of public trust (in consonance with Gambetta's 1993 trust-related framework), there are large number of accounts and testimonies of organized rackets providing informal dispute resolution to large segments of the population excluded from judicial systems or from alternative dispute resolution mechanisms (ADR) sponsored by the states (Santos, 1977; Schärf, 2010; Birol & Dal Ri Junior, 2011; Pedroso & Trincão, 2008). These findings can be framed in part within Diego Gambetta's game theoretical work on trust as explanatory factors of demand for alternative dispute resolution far away from the state domain (Gambetta, 1993).

As a premise of this piece, Buscaglia (1997; 2001b) identify factors within which the excessive complexity of procedural steps imposed upon court users by an excessively interventionist State (i.e. "too much" State procedural interventionism imposing high transaction costs on seekers of dispute resolution) represents a co-factor associated with the more frequent use of informal alternative dispute resolution mechanisms as lower transaction cost options than courts. Furthermore, high demand for private informal dispute resolution

mechanisms is found to be prevalent among private seekers of conflict resolution within environments where the States experience institutional vacuums.

Subsequently, high transaction costs of solving disputes emerges within rural country samples in Buscaglia and Stephan (2005) either through state vacuums and also within too large and highly corrupt judicial sectors, thus hampering the human right of access to the court systems. Samples of 16 countries in Buscaglia and Stephan (2005) find that in disputes involving criminal case-types or fundamental civil, political, economic, social and cultural rights in general (i.e. where individuals seek resolutions with a strong "public law" component), private seekers of dispute resolution mechanisms consider informal dispute resolution mechanisms as a less desirable alternative to the public courts (i.e. a third best option after direct formal state-sponsored mediation as first best and official court litigation as second best) while seeking the power of the State to solve the dispute in order to be able to count with an official registry of the court rulings in order to be able to later enforce rights and obligations as guiding-signals for future disputes.

Given the above prior empirical findings, juri-metrics has helped to associate weaker state institutions (in this case, less efficient and less effective public courts) with barriers to the exercise of human rights to access justice with due process and with subsequent wider uses of imperfect substitutes as non-state providers of informal dispute resolution.

This study extends the prior frameworks by identifying and explaining the empirics of informal dispute resolution supplied by armed groups dedicated to engaging in illegal economic transactions. As such, these suppliers of dispute resolution expect that in exchange for their "services" the parties and communities involved in a dispute will provide human resources, logistic infrastructure, and social protection against rival groups (sometimes the State) in return (Buscaglia, 2001b; Felbab-Brown, 2011). The methodologies used by previous peer-reviewed studies in Buscaglia 2001 and 2011 are based on the experience of the least wealthy segments of rural and urban households experiencing land-titling disputes within a sample of twenty developing middle and low income countries (Buscaglia, 2011; Buscaglia & Stephan, 2005).

The second part of this study provide the background research identifying supply and demand-related factors explaining access to diverse conflict resolution mechanisms (formal and informal) for low-income segments of rural groups based on previous studies' samples of rural jurisdictions in twenty countries with a mix of improving and worsening judicial systems. Much literature has been aimed at assessing the access to dispute resolution mechanisms involving public and informal mechanisms offered by non-state actors, criminal associations, among them. The conclusions presented here are rooted on a theoretical and empirical framework first introduced by Buscaglia (2001c, 2001d) and four years later

empirically tested once again in Buscaglia and Stephan (2005). Buscaglia (2001c) assesses the factors linked to access to justice in developing countries (Buscaglia 1996, 2001c). This study evaluates access to public and private dispute resolution mechanisms by using a law and economics approach that takes into account supply and demand-related factors explaining why protection rackets can expand into the offer of mediation-arbitration "services" aimed at low income rural households.

Furthermore, based on previous analytical accounts of the role of organized crime in dispute resolution found for instance in Milhaupt and West (2000), Part III provides conceptual and associative accounts of criminal associations' expansion into the provision of dispute resolution mechanisms among rural segments of the populations subject to land disputes within jurisdictions with weak state provision of judicial rulings (Milhaupt & West, 2000).

II. EMPIRICAL BACKGROUND OF JUDICIAL SYSTEM SHORTCOMINGS

Many judiciaries suffer from a chronic lack of quality in its court rulings, lack of transparency, and endemic corruption (Buscaglia, 1999). The basic elements of an effective judicial system may be missing, including relatively predictable outcomes within the courts; accessibility to the courts by vast segments of their population, regardless of gender, ethnicity, social background, income and educational levels; reasonable times to disposition; and adequate court-provided remedies (Capelletti *et al*, 1981). In land dispute case-types such as the ones addressed here, lack of confidence in the administration of justice runs high, and are most pronounced among small economic private firms and low-income families (Buscaglia, 2001c). As a result, low-income households facing a dispute tend to demand other resolution mechanisms; they go without redress or simply resort to "private justice" in the form of violence. In this context, informal mediation or arbitration systems may provide an efficient escape valve with comparative advantages for certain types of conflict resolution. Yet many other types of disputes, some involving the violations of fundamental cultural, social, political and civil rights (linked to the public interest) may go unaddressed in most developing countries. These deficits in the provision of dispute resolution mechanisms undermine the legitimacy of the state and disproportionately burden the poorest segments of the population (Buscaglia & Stephan, 2005).

Regardless of the socio-legal traditions involved, the judiciary's inability to satisfy the growing demand for dispositions, is one of the most challenging and

important aspects of judicial reforms worldwide (Buscaglia, Dakolias & Ratliff, 1995). It could be argued that the supply of court services and the performance incentives faced by judges, court personnel, police and prosecutorial services very much depend on the controls in place to prevent political corruption and judicial mismanagement. In the final analysis, the lack of higher-governance institutions (or simply state vacuums) in the form of lack of judicial, administrative, economic and social controls to be applied to the political systems are at the heart of criminality and the lack of human development in too many countries.

Symptoms of judicial "weakness" encompass more frequent abuses of judicial discretion on rulings, or (like in Afghanistan) high proportion of all disputes channeled through the informal systems (United States Institute of Peace, 2012), or (such as in Mexico) extremely low (one digit) rates of judicial dispositions (Zepeda Lecouna, 2004). Moreover, in weak judicial systems in particular and weak states in general, judicial appointments and promotions are based on patronage disregarding quality control standards for work performed by judges and court personnel coupled with a lack of a practical vetting process within which to assess the character and psychological suitability of applicants for the position of a judge. It all adds up and contributes to the poor performance of courts. This is despite the huge sums of money spent on higher salaries and better technologies in most countries (Buscaglia *et al.*, 1995).

Poorly trained judges in an overburdened legal system are also susceptible to corrupting influences by criminal associations and court users in general, thus creating an environment where the rule of law cannot be guaranteed. For example, the use of *ex-parte* communication (separate meetings between a litigant and the judge in charge during proceedings, without the other party present) is standard practice in a diverse set of judicial systems (e.g. Afghanistan, Indonesia, Mexico, and Zimbabwe) and represents one example of legal practice that especially contributes to pushing users - without the desire or ability to bribe - to the informal dispute resolution mechanisms. There are cases even decided in *ex parte* meetings in countries such as Afghanistan, México and Paraguay where litigant lawyers bid before a judge or court clerks for the initial drafting of court rulings (Buscaglia, 1999).

All of the problems mentioned above also add cost and risk to holding and delineating real property during land disputes and thus reduce the potential flows of real investments towards tangible rural investments in land and machinery. At the same time, access to justice is blocked to those who cannot afford the expense of waiting through court delays, thus fostering the entry of genuine non state informal mechanisms and other armed criminal associations with the excuse to solve disputes through "popular justice" in many cases, in exchange for allocating the land in dispute to cultivation of illegal drugs or in exchange for the human

resources provided by young members of rural households, thus representing one channel for the capture of social fabric by organized crime (Buscaglia & Ratliff, 2000).

Furthermore, when rural households do not trust that property rights delineation will be enforced through formal legal means, this limits the formalization of land titles within registries in developing countries' rural jurisdictions thus blocking formal credit and future investment flows in land and machinery (de Soto, 1989; North, 1990).

It is natural to associate state power and dispute resolution capacities. From ancient and medieval written history, one can assess various forms of formal and informal dispute resolution mechanisms co-existing within a social realm. For example, the dispute resolution mechanisms observed in trade fairs in medieval Europe (Bernstein, 1996; Buscaglia & Dakolias, 1992; Greif, Milgrom & Weingast, 1994; Hadfield, 2001; Landa, 1981; Parisi, 2001) or, contemporarily, the internal dispute resolution effectiveness within ethnically homogenous groups providing a combination of mediation and arbitration in rural areas within Afghanistan, Colombia, Congo, México, Nigeria, South Africa, and Southern Sudan. All these non-state collective mechanisms sometimes provide relatively effective dispute resolution (*vis a vis* the official state courts) in terms of their social legitimacy linked to users' perceptions of greater procedural transparency, enhanced efficiency, binding resolutions, higher quality of decisions, and lower administrative complexity.

Higher levels of commercial law technical specialization in conflict resolution and higher levels of wealth at stake in disputes are usually two factors associated with private sector innovation in national and transnational dispute resolution mechanisms among high-income corporations and relatively wealthy individuals (Jamieson, Moi & Cherot, 2012). Yet, among low-income individuals and rural communities who lack judicial options, one can also find frequent arbitration, dispute boards, and private mediation services provided on the basis of monopolistic power of non-state (armed) actors generating violence in the pursue of economic/material benefits. Such are the cases of, for instance, Faryab's rural armed drug trafficking groups in northern Afghanistan; of *FARC* and *AUC* Paramilitaries tribunals in rural areas of Colombia in Pasto and Putumayo; or the combo of arbitration/mediation provided by criminal associations such as the *Primeiro Comando da Capital* (PCC) in the State of Sao Paolo or the *Comando Vermelho* originated in Rio de Janeiro both operating within state prisons and urban favelas; or of *Mai-Mai* armed groups in Congo's South Kivu and North Kivu -eastern region close to the border with Rwanda- (Arias & Davis Rodrigues, 2006).

Buscaglia (Buscaglia, 2001c) examined the experience of 20 countries and the comparative advantage of informal land dispute resolution mechanisms. Land disputes among low income rural households were characterized by tenure conflicts affecting small plots of land (Wojkowska, 2006). According to surveys conducted by Buscaglia (Buscaglia, 2001c), most of these rural households attested to their lack of access to public services in general and lack of court services in particular (Buscaglia, 2001c). Yet, more than two thirds majority of low-income rural households within this 20-country sample did state that when faced with property-related conflicts linked to debts or inheritance, they seek informal dispute resolution through communal bodies or even public officials, such as mayors or governors, outside the court system.

In Buscaglia (Buscaglia, 2001c) and Buscaglia and Stephan (Buscaglia & Stephan, 2005) surveys applied to rural households consisted of two instruments. The first survey in Buscaglia and Stephan (2005) measured the frequencies of households seeking court services and ADR mechanisms over time. Mediations, arbitrations, dispute boards and combinations of the three were the most common mechanisms across our sample of countries where informal community-based mechanisms were in most cases not linked to armed groups as will be detailed in the next section.

Samples of rural households varied among countries. In each of the countries, the samples within 103 selected rural jurisdictions were stratified based on socio-economic factors (income level, patterns of trade and economic activity, age distribution, and gender composition). All of the surveyed rural households were attached to formal or informal tenures of plots of land of less than 5 hectares (in eleven of the twenty countries) and less than 9 hectares (in nine of the twenty countries samples below). The governance variables included procedural transparency, effectiveness of dispute resolution mechanisms, quality of decisions reached by courts and by informal dispute mechanisms, perceived corruption, enforceability of rulings and perceived accountability of those responsible for generating rulings.

Buscaglia (1999), Buscaglia (2001c) and Buscaglia and Stephan (2005) provided an account of judicial performance within the rural dispute resolution samples summarized in the Table 1 (see APPENDIX A). This Table shows that countries, such as Botswana, Chile, and Colombia, experiencing marked improvements in judicial performance applied to land disputes (in terms of enhanced quality of decisions and reduced court delays) with a two-year lag also experienced greater demand for court services and decreases in the percentage of households reaching a resolution of their land disputes through informal mechanisms. These past jurimetrics studies also indicated international associations between separate percentage changes in budget allocations to technology, infrastructure, training and salaries on the one hand and percentage

changes in output indicators addressing quantity and quality of judicial resolutions. On efficiency grounds, countries experiencing percentage increases in budget allocations showing a more than proportional increase in clearance and quality indicators of judicial resolutions, then they are classified as “efficient”. In this regard, only Chile and Colombia were the only two countries within the case file samples in Buscaglia (2008) showing a more than proportional percentage increases in clearance rates (defined as the average proportion of cases resolved divided by inflows of case files within a year) after increases in budget allocations to salaries, physical infrastructure and human capital (i.e. judicial efficiency in access to justice).

Furthermore, by focusing on the second judicial output variable (judicial quality of court decisions), shown in the Table 1 (see APPENDIX A), representative samples of land titling judicial rulings in these three countries jurimetrically show that the after increases in budget allocations to technology, salaries and infrastructure, the courts sampled experienced a more than proportional increase in case files without legal errors affecting the final ruling (i.e. increasing increased from 60 to 95 percent of the sample in Chile and from 74 to 94 percent of the case files in Colombia). In other terms, Chile and Colombia show increases in the second indicator of efficiency of access to justice regarding the quality of court decisions. All other 18 countries in the Buscaglia and Stephan (2005) and in the Buscaglia (2008) samples experienced a decrease in both clearance rates and quality or a less than proportional increase in one or both indicators after increases in budget allocations or decreases in budget allocations, such as in Guatemala, which indicates less efficiency in the State's provision and insurances of access to justice as a human right.

Even when data is not fit to allow statistical tests of cause-effect linkages, surveys of rural households (as court users and as ADR users) explained and analyzed in Buscaglia (2001c) and Buscaglia and Stephan (2005) consistently show that:

1- Rural households within the bottom 20 percent of the net worth scale within each jurisdiction seek the land dispute resolution mechanisms that are perceived as more legitimate, less corrupt, less complex, and more efficient;

2- The economic impact of land dispute resolution settlements usually decreases the rural households' net-worth when using formal judicial mechanisms and increases the rural households net-worth when using informal mechanisms; and

3- Countries with a wider availability of alternative informal and formal land dispute resolution options are also countries within which access to these

mechanisms is offered at a lower relative cost (direct cost of access as a percentage of the value of the land at stake).

Informal channels for dispute resolution analyzed were community and/or ethnic-based mechanisms (mostly bodies composed of neighborhood or tribal leaders) or informal dispute settlements provided by armed groups, in both cases reaching a final resolution to their land-title dispute mostly rooted in issues surrounding debts and inheritance. Informal ethnic, rural or neighborhood bodies are usually composed of two to seven members (depending on the country within the sample) and in many (but certainly not all) cases enjoy a natural legitimacy emerging from the fact that the local populations accept their role as dispute resolution providers due to general aspects surrounding their religious or community leadership or their social prestige as "providers", beyond conflict resolution, within the political, social, healthcare, or even military affairs (Buscaglia, 2001c). For example, the Complaint Board or Panels in Colombia described in Buscaglia (2001c) is composed of three "prominent local residents" selected by a Rural Council (*Parroquias Vecinales*). They enjoy a high level of community-based legitimacy. Although the decision of a Board is not legally binding, they do receive tacit support from municipal authorities. Survey Bureaus within the municipal governments of three Colombian regions expressly refer to the Boards' findings to substantiate their own administrative decisions (Buscaglia & Stephan, 2005). This behavior indicates the local governments' tacit recognition of the Community Boards' existence and social relevance. Board decisions are not appealed, and informal social control mechanisms usually provide their enforcement.

If one measures the proportion of the samples of rural households in each country that report using dispute resolution provided by non-state actors, either based on traditional mechanisms and/or ADR provided by armed groups dedicated to economic crimes, one can find that decreasing judicial performances in land dispute case-types (in terms of larger caseloads, greater delays, and higher frequencies of substantive abuses of judicial discretion) come hand in hand with greater frequencies of demand for ADR, either provided by "traditional" unarmed bodies or armed groups controlling regions. For instance, these non-state actors in Guatemala and Mozambique (worst civil courts' performers in case files linked to land disputes in Buscaglia & Stephan 2005) come hand in hand with an increase in the frequencies of rural households seeking informal land dispute resolution mechanisms provided by, for example, armed groups (e.g. Maras MS13) and traditional ADR providers handled by elders and local non state armed actors. According to Buscaglia 2001c and Buscaglia and Stephan 2005, the same patterns of deterioration in judicial performance and greater demand for informal ADR can be found in Argentina, Benin, Bolivia, Honduras, Guatemala, Mexico, Mozambique, Nigeria, Paraguay Peru, and Venezuela.

III. THE CHARACTERISTICS OF ARMED GROUPS AND THEIR FREQUENCIES OF DISPUTE ARBITRATION

An international pattern emerges whereby the samples of the least wealthy 20 percent of rural households in countries subject to weak judicial systems are at the same time demanding higher frequencies of informal land dispute resolution. In countries, such as Guatemala, Mozambique and Venezuela court users tend to bypass their official judicial systems when seeking to resolve their rural land disputes and seek informal land dispute resolution services from traditional justice arbiters and/or armed groups that are "relevant" within the social fabric through "services" which include social infrastructure in irrigation systems, sewage, and dispute resolution mechanisms. The social bypass of judicial institutions takes place through an income and substitution effects favoring alternative dispute resolution mechanisms (such as mediation and/or arbitration) that is either offered by both, armed and traditional unarmed non state actors. In this way, court users tend to reduce their average costs of access as a proportion of the value of land at stake (see Table 2, APPENDIX B).

As noted, not all informal dispute resolution mechanisms are the same or similar. As detailed above, informal dispute resolution mechanisms provided by armed groups in Afghanistan (such as the Noorzai and Juma Khan networks) or Congo (Mai-Mai in the Kivus eastern region) that do not offer a possibility of having their decisions validated by formal authorities, at the municipal or court levels, lack comparative advantages over the ones provided by traditional mechanisms such as jirgas/shuras in Afghanistan/Pakistan or Juntas Parroquiales en Latin America.

The question to now answer is: what is the scope of economic activities undertaken by those armed groups with criminal associations that are funding and supplying ADR? Much of the foundational theoretical framework on criminal enterprises used here to answer this question derives from Schelling's 1960's and 1970's seminal work and its secondary derivations found in Gambetta's 1993 work analyzing illicit organizations as alternative governance in the midst of weak states subject to different types of failures (Schelling, 1971).

More specifically, one of the answers -provided through the empirical analysis of organized crime-linked judicial case files in Buscaglia 2011 and applied to the 20 countries covered here- (Buscaglia, 2011) is that alternative

dispute resolution mechanisms are one channel for armed groups within which criminal associations aim at penetrating the social fabric of rural jurisdictions because the quid pro quo instilled in the ADR provision represents a source of social protection for armed groups. So, the more a criminal association diversifies its economic activities (for instance, from drugs to human trafficking & trafficking of migrants/refugees, to arms trafficking, to gambling, to counterfeiting and to piracy) the more sophisticated social protection rackets and the deeper/wider penetration of the social fabric will be needed to support these economic activities.

As shown in the Table 3 (see APPENDIX B), most of the transnational criminal groups listed are quite diversified in their scope of economic activities and this expanded diversification is associated with deeper and deeper penetrations into the social fabric of the communities in areas within which criminal associations of armed groups conduct their business in order to obtain wider logistic and human resource support to sustain their operations.

One can adopt the following working hypothesis: a greater scope of criminal diversification in economic activities needs to come hand in hand associated with a deeper socio-economic penetration of communities through the provision of "positive goods" such as land dispute resolution. In this regard, Congo and Mexico top the list with criminal associations jointly involved in 19 and 18 types of crimes within the social base of the criminal enterprise (the Kivi Region in Congo and Sinaloa's El Dorado, respectively), while at the same time, criminal association in Congo and Mexico are the ones providing the most frequent land dispute resolution mechanisms for rural households within the bottom 20 percent of net wealth. One can see from the Table 2 (see APPENDIX B) that countries showing improving effectiveness in judicial performance applied to land dispute case-types (such as Botswana, Chile, and Colombia) are at the same time experiencing drops in frequencies of informal armed group-provided land dispute resolution among the low-wealth segments of the populations. For instance, in the Table 2 (see APPENDIX B), Botswana shows a decrease in the frequencies of the samples of rural households seeking informal resolutions, from 53% in 2004 to 37% in 2011 while the percentage of rural households receiving dispute resolutions from armed groups was reduced from 4% to 1%, thus confirming the expected associated effect predicted by access to justice theories detailed in Buscaglia 1994, Milhaupt 2000, and Buscaglia 2001b.

Furthermore, Colombia's improvements in judicial performance come hand in hand with decreases in the role of unarmed and armed groups (FARC) as providers of land dispute decisions from 21% of the sample of rural households seeking land dispute resolutions from traditional non-armed groups ("*juntas comunitarias*") in 2004 to 6% in 2011, while the role of armed groups decreased from 17% of the sample of rural households in 2004 to 4% in 2011.

The inverse effect occurs in those countries within which judicial systems experience deterioration in performance. Congo, México and Guatemala stand out as worst judicial performers within the previous studies 20-country group in Buscaglia (2005) and Buscaglia (2011). While in Congo the frequencies of rural households receiving land dispute resolutions from armed groups (linked to debts, inheritance or crop-sharing) increased from 87% in 2004 to 96% of our sample of rural households in 2011, in Guatemala increased from 25% in 2004 to 38% in 2011 and in México increased from 18% to 39% of the sample of households. It is noteworthy that as predicted above, judicial worst performers at the same time experience higher growths in the frequencies of dispute "resolution" in the hands of armed groups with the greatest diversification of economic crimes (19 types of economic crimes in Congo, 13 in Guatemala's armed groups, and 18 in México's criminal organizations).

Moreover, as Table 2 (see APPENDIX B) also shows rural jurisdictions in Congo and Mexico subject to the most ineffective judiciaries and with the highest frequencies of land dispute resolution cases supplied by armed groups, have the armed groups dedicated to the largest levels of economic crimes diversification, thus confirming predictions detailed above.

List of economic crimes: Illegal drug trafficking; advanced fee and Internet fraud; Other types of cyber-crimes; human trafficking; diamond smuggling; forgery of documents and passports; cigarette smuggling; trafficking of car parts and stolen vehicles; money-laundering; arms manufacture/arms trafficking; armed robbery; oil bunkering; piracy; counterfeiting; trafficking of natural resources; trafficking of antiquities and cultural property. On sampling and organized crime indicator methodologies, refer to Buscaglia, Edgardo and Jan van Dijk (2003) "Controlling Organized Crime and Corruption in the Public Sector" *Forum on Crime and Society*. United Nations: Vienna.

IV. CONCLUDING REMARKS

As a specific type of non-state armed group, criminal associations rely and require social protection in order to conduct their diversified economic businesses in the midst of tacit social cooperation. A variety of testimonies mentioned above and emerging from the examination of case-files and provided by protected witnesses and indicted individuals converge and corroborate the practice of how and why organized crime captures the social fabric of communities within which more diversified economic crimes are conducted. In this quid pro quo manner, society is subject to protection rackets and to diverse types of dispute resolution mechanisms in the most sophisticated russian-organized crime style tradition.

As non-state actors generating different types of violent crimes (ranging from physical, collective and economic violence), criminal associations feed on the existence of regulatory state failures and state vacuums (i.e. states that are either "too absent" or "too present" through highly-complex procedural interventionism). One such failure is focused on the judicial system's incapacities to guarantee the exercise of a human right to access the court system due to its extreme procedural complexities, its rampant disorganized corruption, and/or its capture/co-option by criminal enterprises.

One of the main implications of this piece is that a more effective and efficient judiciary represents not just a way to enhance deterrence (state) capacities against criminal associations but also a policy channel associated with enhancing human rights by taking away social space used by armed criminal associations to protect themselves. This makes judicial reforms a socially preventive tool to counteract the societal pillar of organized crime.

Furthermore, if the decisions reached by state-provided dispute resolution mechanisms are observable, coherent, and consistent, then the information provided in judicial rulings may allow individuals and communities to avoid violent conflicts compared to when judicial mechanisms are ineffective, opaque, and corrupted thus incentivizing rural households to fall into the hands of armed groups addressing dispute resolution. Moreover, a more effective judicial system makes strategic and frivolous disputes less likely, thus reducing caseloads and enhancing access to justice.

In the kind of environment characterized by legal/judicial uncertainty, production and investment planning is much more difficult to be performed. This socio-economic uncertainty linked to the delineation and enforcement of property rights affects all economic segments of the population (rich, middle class, and poor) but it affects the poorest of the poor segments of the population the most. Engaging judicial policies to correct these regulatory failures - in an indirect manner- would take away social oxygen from non-state armed groups in general, and criminal associations in particular, frequently offering dispute resolution mechanism to those communities deprived of any other choice.

CONFLICT OF INTEREST

The author confirms that this article content has no conflict of interest.

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APPENDIX A

Table 1: Changes in Supply-Related Variables Affecting Quality and Quantity of Court Services (2003-2011)

Country	Budget % Change Capital Infrastruct.	Budget % Change Capital (Training)	Budget % Change Cap. Technolog.	Budget% Change (Salaries)	Clearance % Change 2004-2011	Judicial Quality of Rulings 2004-2011
ARGENTINA	6	-2	3	67	-18	73-56
BENIN	4	-12	2	12	-21	35-19
BOLIVIA	-15	2	11	45	-11	61-36
BOTSWANA	10	23	14	13	7	72-78
CHILE	122	127	99	49	132	60-95
COLOMBIA	73	43	73	34	97	74-94
CONGO	-5	-12	-14	3	-23	27-7
GUATEMALA	2	-7	6	39	-69	49-36
HONDURAS	4	11	61	7	-7	37-22
INDONESIA	2	25	87	9	-2	43-41

MOZAMBIQUE	-8	-3	11	-17	-8	54-12
MEXICO	12	6	-8	31	-27	31-21
NIGERIA	-21	-26	-37	29	-15	74-39
PARAGUAY	-27	-12	-15	24	-19	42-18
PERU	26	-12	11	72	-13	81-62
SOUTH AFRICA	17	8	7	7	-7	89-88
UGANDA	7	3	0	34	-3	32-30
URUGUAY	12	21	17	10	4	81-91
VENEZUELA	-12	0.9	2	24	-27	75-39

NOTE: Statistics above are rounded up. All the indicators are primary data developed by the author based on average percentage changes in budget allocations (in real terms discounting for inflation at 1998 prices) and budgets exercised and approved by Parliaments. Data on clearance rates are based on court-specific data extracted from books and quality of court rulings is an indicator based on sampling court rulings on land titling case files within which court users are always within the 20 percent of the poorest based on Economic Ministries. The samples of case files to calculate judicial quality of court rulings corresponded to case files within which litigants belong to the poorest court users accounting within the lowest 20 percent of the lowest income levels in order to assess the barriers faced when aiming to access justice and other public services.

APPENDIX B

TABLE 2

% of RURAL HOUSEHOLDS WITH LAND DISPUTES SUBJECT TO ADR PROVIDED BY ARMED vs. NON ARMED GROUPS (2004 and 2011)		
Country	TRADITIONAL ADR 2004 and 2011	ADR PROVIDED BY ARMED GROUPS 2004 and 2011
ARGENTINA	3/5	1/2
BENIN	48/51	7/11
BOLIVIA	39/41	7/8
BOTSWANA	53/37	4/1
BRAZIL	38/21	2/1
CHILE	19/9	2/0
COLOMBIA	21/6	17/4
CONGO	87/96	87/96
GUATEMALA	49/56	25/38
HONDURAS	24/38	11/16
INDONESIA	12/13	4/3

MOZAMBIQUE	77/89	8/21
MEXICO	12/29	18/39
NIGERIA	62/67	6/8
PARAGUAY	45/49	26/29
PERU	31/37	2/6
SOUTH AFRICA	45/32	1/3
URUGUAY	23/12	0/0
VENEZUELA	17/48	2/9

TABLE 3

COUNTRY	SCOPE (number) OF DIFFERENT TYPES OF CRIMES
ARGENTINA Sung I and Ming Families within the TriBorder Area of Argentina, Brazil and Paraguay plus Uruguay at: http://www.loc.gov/rr/frd/pdf-files/TerrOrgCrime_TBA.pdf	8 types
BENIN Kakudu group operating in Benin, Togo, Nigeria and South Africa http://www.unodc.org/pdf/transnational_crime_west-africa-05.pdf	11 types
BOLIVIA La Corporacion at http://books.google.it/books?id=xgZUDbcrV9EC&pg=PA175&lpg=PA175&dq=%22la+corporaci3n%22%22criminal%22%22bolivia%22&source=bl&ots=PozBIXuvb5&sig=GQObBuuPKPEkrEsYhxbYwgnTvvs&hl=en&sa=X&ei=s-CDUY6aBsWk4gSthoGoCQ&redir_esc=y#v=onepage&q=%22la%20corporaci3n%22%22criminal%22%22bolivia%22&f=false	12 types
BOTSWANA Oka-vango Delta people and their ADR: http://globalsojourns.com/imagedump/Web_Articles/Articles_Botswana/Okavango_Delta_People.pdf Gems, human, drug trafficking covering Angola and Botswana	3 types

<p>BRAZIL</p> <p>PCC and CV both groups provide ADR to favelas in Sao Paolo and Rio.</p> <p>Accounts of cases at:</p> <p>http://www.utsam.org/images/upload/attachment/cilt2/sayi1/The%20Role%20of%20Organized%20Crime%20in%20Informal%20Justice%20Systems%20The%20Brazilian%20Case.pdf</p> <p>Sung I and Ming Families within the TriBorder Area of Argentina, Brazil and Paraguay plus Uruguay</p> <p>http://www.loc.gov/rr/frd/pdf-files/TerrOrgCrime_TBA.pdf</p>	6 types
<p>CHILE</p> <p>Sung I and Ming Families</p>	3 types
<p>COLOMBIA</p> <p>Diego Montoya & Wilber Varela (Norte del Valle organization)</p>	11 types
<p>CONGO</p> <p>Mai Mai (Mayi-Mayi) organization in Kivus</p> <p>At: http://www.child-soldiers.org/user_uploads/pdf/finalmaimaibriefingpaperfeb10english395033.pdf</p>	19 types
<p>GUATEMALA-MEXICO</p> <p>Sinaloa Organization</p> <p>http://www.cartercenter.org/resources/pdfs/peace/americas/briefing_books/materials_grupo_trabajo3.pdf</p>	13 types
<p>HONDURAS</p> <p>Sinaloa Organization</p> <p>http://www.cartercenter.org/resources/pdfs/peace/americas/briefing_books/materials_grupo_trabajo3.pdf</p>	8 types
<p>INDONESIA</p> <p>Free Aceh Movement (GAM)</p> <p>http://www.dtic.mil/cgi-bin/GetTRDoc?AD=ADA518422</p>	4 types

<p>MEXICO</p> <p>Sinaloa Organization</p> <p>http://www.cartercenter.org/resources/pdfs/peace/americas/briefing_book_s_materiale_grupo_trabajo3.pdf</p>	18 types
<p>MOZAMBIQUE</p> <p>Kakudu group operating in Benin, Togo, Nigeria and South Africa</p> <p>http://www.unodc.org/pdf/transnational_crime_west-africa-05.pdf</p>	6 types
<p>NIGERIA</p> <p>Kakudu group operating in Benin, Togo, Nigeria and South Africa</p> <p>http://www.unodc.org/pdf/transnational_crime_west-africa-05.pdf</p>	11 types
<p>PARAGUAY</p> <p>Sung I and Ming Families within the TriBorder Area of Argentina, Brazil and Paraguay</p> <p>http://www.loc.gov/rr/frd/pdf-files/TerrOrgCrime_TBA.pdf</p>	15 Types
<p>PERU</p> <p>Zevallos Organization linked to Shining Path</p> <p>http://www.nationmaster.com/country/pe-peru/crime</p>	10 Types
<p>SOUTH AFRICA</p> <p>Kakudu group operating in Benin, Togo, Nigeria and South Africa</p> <p>http://www.unodc.org/pdf/transnational_crime_west-africa-05.pdf</p>	5 types
<p>URUGUAY</p> <p>Sung I and Ming Families within the TriBorder Area of Argentina, Brazil and Paraguay plus Uruguay</p> <p>http://www.loc.gov/rr/frd/pdf-files/TerrOrgCrime_TBA.pdf</p>	7 types
<p>VENEZUELA</p> <p>Diego Montoya & Wilber Varela (Norte del Valle organization)</p>	8 types

