



TISCO WORKING PAPER SERIES ON CIVIL LAW AND CONFLICT RESOLUTION SYSTEMS

Measuring the Costs and Quality of Paths to Justice: Contours of a Methodology*

Martin Gramatikov

Tilburg University, Tilburg Institute for Interdisciplinary Studies of Civil Law
and Conflict Resolution Systems (TISCO); Hague Institute for the
Internationalisation of Law (HiiL)
m.a.gramatikov@uvt.nl

Maurits Barendrecht

Tilburg University, Tilburg Institute for Interdisciplinary Studies of Civil Law
and Conflict Resolution Systems (TISCO), International Victimology Institute
Tilburg (Intervict), Tilburg Law and Economics Centre (Tilec); Hague Institute
for the Internationalisation of Law (HiiL)
j.m.barendrecht@uvt.nl

Jin Ho Verdonschot

Tilburg University, Tilburg Institute for Interdisciplinary Studies of Civil Law
and Conflict Resolution Systems (TISCO); Hague Institute for the
Internationalisation of Law (HiiL)
J.H.Verdonschot@uvt.nl

**TISCO Working Paper Series on Civil Law and
Conflict Resolution Systems
No. 004/2008
Month 06, 2008, Version: 1.0**

&

* This study was facilitated in full by the Hague Institute for the Internationalisation of Law (HiiL) through the sponsoring of a research project titled *Measuring Access to Justice in a Globalising World, The Hague Model of Access to Justice*.

Abstract

Legal problems and justice needs are similar in different jurisdictions and different locations. Processes for resolving them, as well as rules determining outcomes vary widely, however. Measuring the price (costs) and quality of such 'paths to justice' from the perspective of the user is likely to enhance users' choice, enable comparison and learning, to increase transparency, and to create incentives for improving access to justice. This paper discusses the contours of a methodology for this purpose and of some concrete tools for measuring costs, procedural quality, and outcome quality. Conceptualization of a path to justice, criteria and items included in the measurement framework, as well as different data collection methods, are presented. Experiences from two pilot studies give insight in the challenges that lie ahead, and in the potential uses of the (developing) measurement methodology.

Table of contents

I.	Introduction.....	3
II.	Measuring access to justice	5
III.	Units of analysis: paths to justice.....	7
III.A.	Legal problems and justice needs	7
III.B.	Definition of path to justice	9
IV.	Developing indicators: what to measure?.....	10
IV.A.	Costs of travelling a path to justice	11
IV.B.	Quality of procedure	11
IV.C.	The quality of outcomes.....	12
V.	Methodology for measuring cost and quality of paths to justice.....	13
V.A.	Data collection methods.....	14
V.B.	Samples	14
V.C.	Response items/Scales.....	15
V.D.	Indexes.....	16
V.E.	Further improvements of the methodology.....	16
VI.	Added value of measuring access to justice through the users' perspective	17
VI.A.	Transparency of the paths to justice	17
VI.B.	Comparing paths to justice	17
VI.C.	Better understanding of users' experiences	19
VI.D.	Understanding barriers to justice	19
VI.E.	Empirical example 1: Out-of-pocket expenses as barriers on a path to justice.....	20
VI.F.	Empirical example 2: Legal certainty and perceptions on quality of procedure and outcome.....	23
VII.	Conclusion.....	25
	References.....	25

I. Introduction

Several studies have been carried out to explore how people respond to legal problems (ABA 1994, Genn 1999, Genn & Paterson 2001, Van Velthoven & Ter Voert 2004, Pleasence et al. 2004, Coumarelos et al. 2006, Currie 2007). Such legal needs surveys typically explore which “paths to justice” people experiencing legal problems follow, by examining the steps people take in order to cope with a legal problem they faced.

Currently, various efforts are undertaken to measure the broad concept of rule of law. Some focus on perceptions of particular dimensions of the rule of law (Freedom House, Rule of Law index of the World Justice Project). Measurement encompasses areas like judicial independence, primacy of rule of law, property rights protection, equal treatment, accountability under the law, etc. Another perspective is the input in justice systems. What is invested in the justice system? How many officials are present (European Commission for the Efficiency of Justice 2005)? However, there is a lacuna when it comes to measuring actual perceptions of end users of the justice system. No all-embracing systematic way to assess people’s experience when they seek access to justice is available (Carfield 2005). Little is known about the amount of time and money people actually spend when they take action to cope with their legal problems. What are the emotional costs they incur? How do they perceive the quality of the procedure and of the outcome? How are different procedures for similar problems performing and how do procedures for different problems compare? In short: can we make access to justice a quantifiable concept instead of a broad aspiration?

In this paper we summarize the conceptual and methodological challenges of measuring the costs and quality of access to justice. Our experience derives from the developments in the project “Measuring Access to Justice: The Hague Model of Access to Justice”.¹ Barendrecht, Mulder et al (2006) have proposed the outline of a program for developing a measurement methodology and measurement tools in the milestone paper “How to Measure the Price and Quality of Access to Justice”. The paper addressed the rationale behind, raised numerous questions about, and identified challenges for measuring cost and quality of access to justice. During the last year the research group and its network of experts addressed many of the outstanding challenges. Two pilot projects were set up to test the first version of a questionnaire and the methodological framework on which it is based. In this paper we want to integrate the lessons learned, discuss the concepts in their dynamic development and formulate the current challenges for designing ways to measure the price (all costs) of access to justice and the quality of the ‘goods’ (processes and outcomes) that users of paths to justice receive in return.

The paper develops as follows. The core objective of the project “Measuring Access to Justice: The Hague Model of Access to Justice” (bellow referred to as MA2J) is to develop and test a methodology for measuring costs of paths to justice. This will be explained in Section II and here we also discuss the relationship between costs and quality of paths to justice and the barriers to access to justice users may experience. It is assumed that individuals who experience problems and perceive them as legal problems have more or less pressing needs for justice. A need for justice is defined as “[...] need of a person for protection by outside norms or interventions that structure the conduct of another person that he may encounter or has a relationship with [...]” (Barendrecht, Kamminga et al. 2008). For practical reasons the strategies to respond to justice needs will be measured from the moment when a person takes steps toward resolving the problem. Below we discuss the implications of this decision and the inferences we can draw regarding access to justice for those who did not decide to use the legal mechanisms for solving their problems.

We take a “demand-oriented” approach. The focus is on the most urgent legal problems that citizens experience. Twelve categories of legal problems were identified (Barendrecht et al 2008) that appear to be urgent in many, if not most, legal systems and locations. The assumption is that these categorizations are among the criteria that should guide choices about investments in institutions, regulations and procedures. Therefore, for the purpose of describing the accessibility of justice systems, these legal problems will set the agenda, and any methodology intended to measure access to justice will have to be suitable for assessing the mechanisms used to manage these problems (Section III).

Barendrecht, Mulder et al (2006) developed the theoretical model for measuring cost and quality of access to justice and set out its basic parameters. Important decisions were achieved at this early level of conceptualization. Perhaps the most important direction for the research is the chosen “user-based” perspective for measuring the access to justice (see Section I). A user is defined as the natural person who actively initiates and maintains the dispute resolution process. Another important decision of Barendrecht, Mulder et al (2006) is that the access to justice will be measured through the experiences of a user on his “path to justice”. But what is a path to justice, how comparable are paths within and between jurisdictions, at what point starts and ends a path? These issues will also be elaborated in Section III.

Section IV discusses which elements of costs and quality the methodology and measurement tools will try to assess. Different instances of costs-pocket could be effective barriers to access to justice. Lawyers’ fees, other out-of-pocket expenses, lost

¹ Up to date information about the project, companion papers, as well as a draft questionnaire are available at: <http://www.measuringaccesstojustice.com>

opportunity costs and emotional costs could dissuade a person from taking action to solve the problem with legal means. Even if a person makes the decision to pursue her legal rights, piling costs could effectively decrease the expected gain from the justice seeking behaviour. Tangible and intangible costs of justice, however, are not the only categories that could hamper the justice process. Although theoretically all barriers could be seen as costs, our approach to access to justice distinguishes the quality of the procedure and quality of outcome as important properties of the processes that are perceived or designed to deliver justice.

Section V elaborates on the challenges ahead of empirical studies of cost and quality of access to justice and explores alternative methods of data collection. Section VI discusses the possible goals and uses of the methodology and measurement tools: transparency of paths to justice, comparing the performance of paths to justice, better understanding of users' experiences, and better understanding of the barriers to access to justice. We assume, for instance, that perceptions on quality of procedure and outcome are not randomly distributed around different levels of costs. Within our theoretical model one can hypothesize two different patterns of relationship. First, we could expect that with the increase of cost the satisfaction with quality and outcome will increase. This paradigm puts the justice procedures in the context of public services and leads to expectations that more resources buy better services. The second rivalry hypothesis here is that users of justice expect little or no elasticity of quality of procedure and outcome and covariance between costs and quality will be viewed as breach of the concept of justice. Measuring cost and quality of access to justice relies on the belief that these indicators are not constants, but vary by jurisdiction, procedure, type of legal problem and user. With the developed methodological framework we want to capture this variation, its sources then and estimate statistics and parameters which will make transparent the barriers to justice. We show some results of two pilot studies to illustrate these points. Section VII concludes.

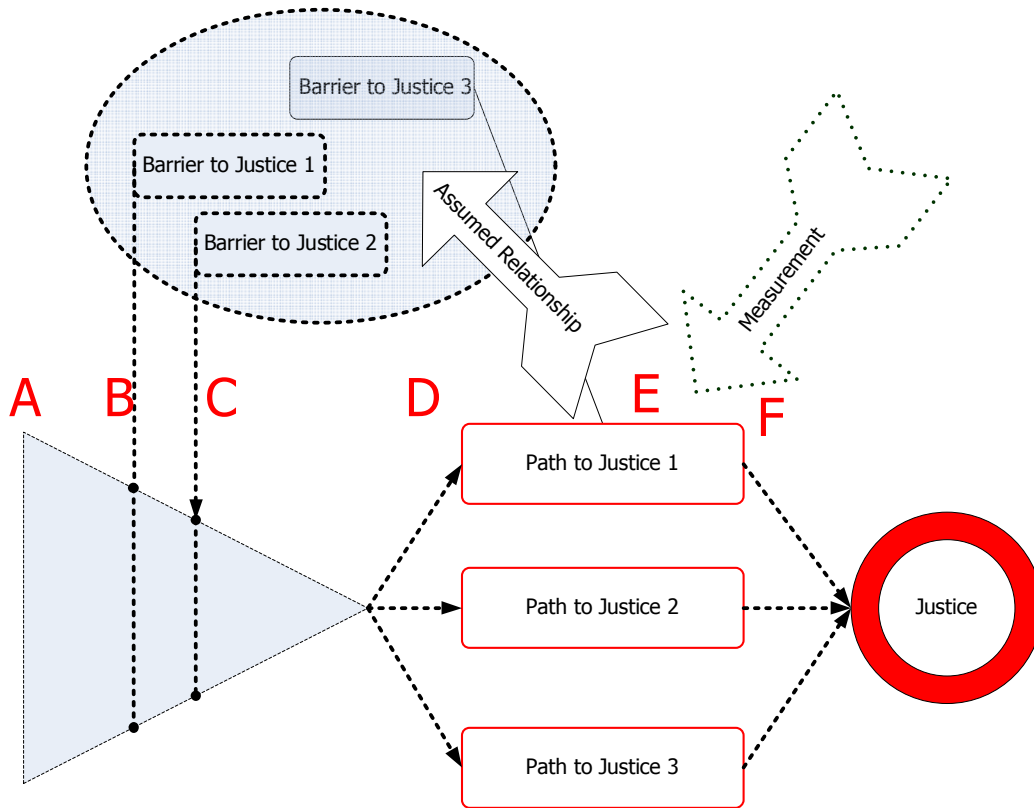
II. Measuring access to justice

The main aim of our methodological framework is to reveal the cost and quality of access to justice from the perspective of the user of justice. An end user is a person who has already taken steps to solve her problems with mechanisms and procedures that are regulated with legal rules or take place in the 'shadow of the law'. Our methodological framework expects that the user has made assessments of his experiences with the cost of justice, quality of procedure and quality of the outcome. In other words, our measurement model uses three indicators of access to justice - costs of justice, quality of the procedure and satisfaction with the outcome (for a more detailed discussion see Section IV). Some methods as the diary study could start measuring the user experiences well before the end of the path to justice. However, without the perceptions on the quality of the outcome the observation will still not be complete. This means that the measurement is over when the user has already travelled the whole way from encountering the legal problem, throughout the path to justice, to the end of the path.

Figure 1 visualizes our model of access to justice. At the beginning is the pyramid of legal problems and needs for justice. Not every problem is perceived as legal and not every legal problem is acted upon. Consistently, the justiciable events research, shows that only a tiny portion of the problems, that are considered legal and non-trivial, are solved with a mechanism belonging to the formal legal system (Genn 1999; Pleasence, Genn et al. 2003; Pleasence, Buck et al. 2004; Currie 2005). Therefore, the base of the pyramid (Point A, Figure 1) is rapidly decreasing due to the existing barriers. Many different social and legal phenomena could act as barriers at this point. Often the intuitive cost-benefit analysis of the size of the problem, the required investments, and the expected return on investments in effort and money renders a negative value. As a result, the likelihood for

action decreases significantly. Also, some problems solve themselves, or just disappear as time goes.

Figure 1: Model of access to justice



Our measurement methodology does not focus directly on the pyramid of legal problems and justice needs. It is the “justiciable event” methodology that is significantly better equipped to analyze its size and shape. Whereas our goal is to measure the experiences with cost and quality of access to justice, we direct the research focus on the next stage of the model – the paths to justice. In fact, paths to justice are the primary units of analysis in our research design (for conceptual definitions of paths to justice see Section III). After experiencing a legal problem the users could select different strategies and taking on a path to justice is one of these. From a subjective point of view the person with a legal problem will normally want to solve her problem. The term path to justice has a normative connotations. It presupposes that justice will be delivered. Although this could not be true we call the processes path to justice because the whole procedure is triggered by a need for justice. Subjectively and objectively it is difficult and often impossible to tell justice from injustice. In order to avoid introduction of such a volatile concept in our measurement methodology we will not analyze the extent to which the specific process leads to a just outcome. The outcome is described as the perceived result of the procedure (see Section IV.C). Whether it is just or not we do not know. What we can estimate is how the user perceives the quality of the received outcome.

As we will see further in Section III, paths to justice could be classified in discrete categories using two criteria – type of legal problem and type of procedure. In Figure 1 both interpretations are possible – multiple legal problems follow a path to justice, which varies in terms of process or a single legal problem could be solved with 3-4 legal processes (or in the case of negotiations – a process taking place in the ‘shadow of the law’). Below we will discuss in detail our definitions of when a path to justice starts and

ends. What is important here is to reiterate that the actual measurement concentrates on the experiences with costs and quality of procedure and quality of the outcome that users experience.

III.Units of analysis: paths to justice

Path to justice is a crucially important concept for the measurement methodology. In this section we relate paths to justice to legal problems and justice needs, define paths to justice, and elaborate on the beginning and the end point that demarcate a path to justice.

III.A Legal problems and justice needs

First of all, a methodology to measure the most pressing and urgent social needs that are perceived as legal and are then transformed into justice needs. Barendrecht et al. (2008) call for adopting a “demand-oriented” or “empowerment” perspective on legal needs and needs for justice: “The focus should be more on what [legal] institutions will accomplish for the population” (p. 4). With this perspective the authors use six analytical methods to discover a universal set of legal problems and the justice needs related to them. A legal problem is defined as “a situation in which a person may develop a need for protection by outside norms or interventions that structure the conduct of another person that he may encounter or has a relationship with (justice need)”. Barendrecht et al. (2008) compiled a list of 12 most frequent and pressing legal needs (see Table 1). The list depicts a framework of the social needs that the legal systems face and thus structures their priorities from the perspectives of demand-orientation and empowerment.

Table 1: Most frequent and pressing legal needs (Barendrecht et al 2008, p. 26)

<i>Category</i>	<i>Examples</i>	<i>Threats</i>	<i>N top 10 (max =8)</i>	<i>N of Sever. Indic.</i>	<i>N Count. Spec. Courts (max=16)</i>	<i>Value Interest at Stake</i>	<i>Costs Self Prot.</i>	<i>Value SI.</i>
1 Subsistence needs	Problems regarding access to basic survival needs such as food, water, heating, urgent health care.	Scarcity	4	0	6	5	-	-
2 Basic personal security	Crimes related to the person. Unfair detention. Personal injury.	Aggression by outside groups, robbery, detention, negligence	6	4	16	5	5 (3)	5
3 Property rights protection	Crimes related to property. Registration of property. Property disputes. Expropriation.	Robbery, thieves, claims on property by others, expropriation by government or private developers.	7	0	4	4	5	5
4 Identity issues and documents	Acknowledgement of identity and nationality.	Bureaucratic authorities, individuals opposing registration	0	0	0	4	5	5
5 Problems in land use relationships	Eviction. Problems in relation to land use or house leases.	Landowner asking high share/rent or eviction	7	3	4	3/4	4	4
6 Problems in employment relationships	Dismissal. Employment conditions. Safety in the workplace.	Employer offering low wage, bad labor conditions, unfair dismissal.	8	4	12	4	4	3/4
7 Problems in family relationships	Divorce. Domestic violence. Exploitation of women or children.	Domestic violence, unfair treatment/exploitation of women and children	8	4	10	4	4	4
8 Problems in neighbor relationships	Disturbances. Environmental damage.	Disturbances, environmental damage, neighbor violence	4	0	1	3	4	4
9 Problems with sellers of goods/services	Issues regarding quality of goods or services.	Fraud, low quality goods.	8	0	0	1/2	3	1/2
10 Business problems	Problems with setting up businesses. Unfair regulation. Unfair taxation. Problems between participants. Problems with suppliers.	Untrustworthy or problematic business partners, government exploitation, extortion by criminals, bureaucracy	2	0	6	4	4	4/5
11 Debt problems	Unpaid debts.	Debts not paid	7	0	0	2	3	1/2
12 Problems with financial services	Savings. Insurance. Pensions.	Fraud, conflicts about performance.	0	0	1	3	3	3/4

Once the legal problems and the corresponding justice needs that we want to measure are identified we can define and operationalize the paths to justice that are present to meet this demand. This is an important part of the methodology since paths to justice are defined as units of analysis in the methodology for measuring cost and quality of justice (Gramatikov 2007). Choosing paths to justice as units of analysis has three implications. First, the methodology should be calibrated according to the properties of the selected path to justice. For instance the population of users as well as the sample characteristics will be determined by the specifics of the path under investigation. Next, the scope and extent of possible generalizations depend on the units of analysis. This means that inferences on the paths will be more precise than inferences on other measured phenomena. Third, selection of paths to justice as units of analysis requires sufficient conceptualization of the paths in order to avoid comparison of ‘apples with oranges’ (for more on the comparability of paths see Section VI.B).

III.B. Definition of path to justice

The term “path to justice” has rather sociological than legal connotation. It is not used in substantive and procedural legal provisions and we cannot derive its meaning through normative legal analysis. Itself the term “path” suggests less uniformity and abundance of variation within certain intervals. Our definition of path to justice is simple: **a commonly applied process which users address in order to cope with their legal problem.** Under this definition a process is defined in a broad sense. A path to justice could be a trial or arbitration but also a negotiation since it takes place because the parties use it to cope with a legal problem. They may or may not expect that the legal system could acknowledge and enforce their subjective rights and obligations. In such a way the measurement methodology recognizes that dispute resolution mechanisms such as negotiations, conciliations, mediation etc. take place in the ‘shadow of the law’. Measuring these informal mechanisms and comparing them with the structured and regulated procedures may yield lots of information on the decisions that people take when a legal problem has to be resolved. For instance, the differences between the costs of formal and informal paths to justice could be interpreted as the revealed preferences toward legal certainty. Here we assume that the structured path is more expensive but guarantees more legal certainty. A logical extension of the assumption is that in jurisdictions with functioning legal systems the informal paths will provide more certainty due to the strong “shadow of the law” and as result of this the members of the society pay less for solving their legal problems.

In order to be measured the important aspects of the path must be clearly defined. Properties that must be defined are: the beginning and the end of a path as well as criteria for distinguishing one path from another one.

According to our definition **a path to justice begins when a person takes steps to resolve his/her legal problem through external norms or intervention.** Different steps are possible triggers of path to justice – search for information, contacting a lawyer or the other party, referring the problem to public authority etc. Other definitions of beginning of a path are possible (Gramatikov 2007) but for the sake of measuring we select an externally observable action which is identifiable and clear for the respondent.

Definition of an end of a path to justice is significantly more difficult. In a world where every social artefact is amenable to objective measuring we could claim that the moment when justice is delivered or the existing problem is solved should mark the end of a path to justice. In reality assessing justice is largely a function of normative valuation. In order to substitute such a subjective assessment with more objective criteria **we define the end of a path as the moment of a final decision by a neutral, joint agreement of the**

parties, or an end to the process because one of the parties quits the process. This definition, which closely follows the concepts used in legal needs research, emphasizes the actual end of a pursuit to solve a legal problem. Unlike the alternatives, we expect that users of justice will be better equipped to recognize and report this moment. The approach recognizes that not every claim for justice is valid as well as that in every legal system valid claims are rejected. Instead of asking the users of justice to assess the functioning of the legal mechanisms, our approach relies on their assessment on the procedure and the outcome of the procedure.

Numerous questions could emerge out of the current definition of beginning and an end of a path. One issue is whether a path to justice includes a possible appeal stage. The definition we use, allows for measuring the first instance of judicial proceedings as a path to justice, the appeal stage as a separate path, but would also enable measurement of the entire procedure from the first instance to the last possible appeal and revision. Other issues are more difficult to solve. If a legal problem worsens over time and finally a person decides to act, is this path to justice starting at this later point or are the previous grievances included as well? If a person receives a decision by a neutral but it is not enforced, is such a decision the end of a path to justice? Enforceability, or expectations about that, could be an integral part of the criteria for evaluating the outcome of the process. What if a person tries several mechanisms for solving her legal problem and each of them ends at a different phase? All these questions pose significant challenge for the methodology of measuring access to justice from the perspective of the client.

The methodological framework needs to discriminate between different existing paths to justice. Two criteria could be used for the purposes of classification. First, paths could be defined according to the legal problem which is causing the dispute. Using this criteria we could measure numerous paths such as: path for divorce, path for dismissal, consumer disputes path etc. Alternative approach would be to define paths to justice using the procedure which is used. In that case we could have a shorter list of possible paths – i.e. negotiation path, mediation path, trial path etc.

IV. Developing indicators: what to measure?

Three basic indicators for accessibility of justice have been defined: Costs, Quality of Procedure and Quality of Outcome. One of the questions that were discussed in (Barendrecht, Mulder et al. 2006) was whether to measure each of these, and if so, whether to measure them separately or integrate each of them into the costs indicator. Intuitively, however, it is more appealing to see access to justice as a (complicated) service with a price that has to be paid for achieving a service with certain qualities. Moreover, distinguishing between the quality of a process and the quality of the outcome fits perceptions lawyers, who tend to distinguish between law of procedure, and substantive law, as well as the common approach in social justice research, where procedural justice and distributive justice are different concepts and even different research traditions. Thus, it is preferable to measure each of the three indicators as a separate construct. Obviously, out of pocket expenses and perceived procedural quality are very difficult to compare and add up. One of the current challenges is to find strategies for developing indexes that link the three constructs (see Section V.D).

For each of the three constructs (indicators), a literature review has been undertaken in order to identify the elements of costs, procedural quality, and outcome quality that users of paths to justice are likely to see as important (Gramatikov et al. 2008, in progress; Klaming & Giesen 2008, and Verdonschot, Barendrecht & Klaming 2008, in progress). These papers looked for criteria that reflect principles proposed in legal theory and enacted in legal systems, but are also confirmed in empirical research as valid constructs, and as elements that users of processes find important. Then, the criteria

were operationalised in questions that can be presented to users (in survey questionnaires, in focus groups, or by other methods, see Section V).

IV.A. Costs of travelling a path to justice

The first decision to be made is whether only costs born by the end users of path to justice are analyzed, or also costs born by others such as governments subsidizing legal aid or courts, lawyers doing pro bono work, or legal expenses insurers. The focus will be on the costs born directly or indirectly by end-users, but the current methodology does not exclude measurement of costs shifted to others.

Two distinct ways to breakdown the costs of justice were identified. Costs can be categorized according to the stages of a path to justice. The actions people have to undertake at different stages of a path would then define the categories. For instance, the costs made for contacting the other party, consulting a lawyer, collecting information and evidence etc. Another possibility is to categorize costs by type: out of pocket expenses, time spent, costs of delay and emotional costs. In Barendrecht, Mulder et. al. (2006) it was stated that possibly, several different manners should be tested in order to find a sufficiently general way to categorize costs. Currently, the type-based categorization seems preferable, since this is more likely to cover all costs people face on various paths. By testing the measurement instrument, the categories are further refined and narrowed down, as to find optimal categories.

IV.B. Quality of procedure

With respect to the quality of procedures, several different theoretical frameworks can be used, like philosophical and economic perspectives on 'procedural goods' and elements of procedural values embedded in legal procedure rules. However, in the field of social psychology there has been an extensive amount of research analyzing how people experience procedures. The scope of this research is broad and has covered most, if not all, elements of 'procedural goods' suggested by other theoretical approaches (Klaming and Giesen 2008). The majority of these studies suggests that people care deeply about the procedure used to obtain an outcome, maybe even more than about the outcome (Thibaut and Walker 1975; Lind and Tyler 1988; Tyler 2006). These investigations of procedural justice have consistently demonstrated the importance that people associate with the quality of the procedure in different environments and settings. As the vast majority of research on procedural justice comes from the field of social psychology, the theoretical and empirical framework of social psychology is used in order to define indicators for users' evaluations of the quality of procedures. The quality of procedures is broken down into people's evaluations of procedural, interpersonal and informational justice (Klaming and Giesen 2008). Procedural justice refers to more structural aspects of a procedure including aspects such as voice, neutrality, trustworthiness, consistency and accuracy. Interpersonal justice is defined as the degree to which people are treated with politeness and respect, and informational justice refers to explanations provided to people. Empirical studies have also demonstrated that procedures in which people are treated with respect and politeness and in which the rationales of procedures and decisions are explained result in more favourable justice perceptions (Bies and Shapiro 1987; Bies and Shapiro 1988; Colquitt 2001). In contrast, any perceived violation of procedural, interpersonal or informational justice has a negative impact on fairness evaluations.

Because we measure paths to justice and not per se procedures with a clear beginning and end, isolating the quality of procedures may be difficult. People may not distinguish interactions with actors that are part of the procedure from other actors. For instance, to people travelling a path to justice, their lawyer may be very much part of it and interactions with a lawyer may have a strong effect on their perception of the quality of

the procedure. However, it may be possible to control for this effect by taking the presence or absence of lawyers or other advisers into account. The quality of the procedure may also be influenced by the conduct of the opposing party, and many other confounding variables. Whether the procedural quality of a path to justice can be evaluated separately and in a meaningful way remains to be seen.

IV.C. The quality of outcomes

Measuring the quality of outcomes brings us to the problem that was addressed earlier. It seems to assume that we can objectively distinguish a “right” outcome from an “erroneous” outcome and that we also have an objective idea of the magnitude of that error. There are many different ways in which “justness” or “fairness” of what people get out of procedures can be evaluated. Justice theories offer competing criteria. Empirical research shows that different people may have different “tastes for fairness” in different contexts. However, some criteria have more empirical support than others, and some theories about justice elicit more general enthusiasm than others. At this stage of the project, criteria for the quality of outcomes are selected if they meet two conditions (Verdonschot, Barendrecht & Klaming 2008). First condition is that a criterion should be regularly proposed notwithstanding critical scrutiny in the theoretical justice literature. Second condition is that empirical research confirms that a substantial proportion of the population actually uses the criterion to evaluate the justness or fairness of outcomes. By taking this approach, we try to avoid the discussion of what ‘Justice’ is and strictly limit ourselves to reflecting principles and criteria that are proposed and confirmed in literature and meet our two conditions.

One of the problems encountered here is that normative theories of justice often imply neutrality. Some empirical studies try to create this by asking impartial spectators to assess outcomes. However, in real life situations, people are not behind a veil of ignorance, but are highly involved. Psychological and contextual factors may influence their perception of the quality of an outcome. Especially when high stakes are involved, these may strongly affect their perceptions. It therefore may be necessary to control for as many of these factors as possible.

Another issue is the variability of quality criteria across legal problems. The determinants for quality of the outcome for a victim of a heinous crime will to some extent differ from those of a consumer seeking redress. Our aim is to develop a uniform measuring instrument that is fit for measuring paths to justice for various different legal problems. Therefore, it should include criteria for all such differing outcomes. One of the challenges is to come to a manner for aggregating the scores on the different criteria taking into account the relative importance in different settings. The twelve categories of legal problems may be helpful in this respect.

Further, outcomes sometimes can be ambiguous. A specific process may result in outcomes with more than one dimension, for all of which the methodology has to be suitable. For instance, mediations commonly take as much of the parties’ interests as possible into account, which often leads to outcomes with multiple aspects. An outcome of a process also may consist of an apology and damages. These may have to be evaluated according to different criteria. People may evaluate the quality of the different aspects differently.

Table 2 gives some indication of the elements the measurement methodology will cover, and a draft questionnaire is available at <http://www.measuringaccesstojustice.com/index.php/Questionnaire>. This is still work in progress, however, and depending on the evaluations of further pilot studies the criteria and the items that will become part of the measurement methodology may have to be adjusted.

Table 1: Summary of the indicators/principles, their dimensions, and the criteria that may become part of the measuring instrument

Costs	Quality of Procedure	Quality of Outcome
Out of pocket expenses (legal costs, fees, travel costs, etc.)	Procedural justice (voice, neutrality, trustworthiness, consistency, accuracy)	Distributive justice (proportionality to need, contribution, effort; equality; efficiency)
Time spent (time for travel, waiting, collecting evidence, instructing lawyers)	Interpersonal justice (respect, politeness)	Restorative justice (acknowledgement of harm done, acceptance of responsibility),
Costs of delay (duration)	Informational justice (explanations of process and outcomes)	Corrective justice (reparation of harm)
Stress and emotional costs		Retributive justice (proportionality to harm inflicted)
		Transformative justice (fitting interests, strengthening relationships)
		Formal justice (equal treatment to others, transparency of criteria, comparability)

V. Methodology for measuring cost and quality of paths to justice

Measurement of cost and quality of access to justice from the users' perspective requires vigorous empirical legal research. In Sections III and IV we discussed the units of analysis and the indicators that we use to monitor access to justice. Rarely one can find available data sources containing users' experiences with cost of justice and their assessment of the quality of the procedures and their outcomes. Therefore our methodological framework presumes that collection of primary data is an indispensable step in the measurement methodology (on the distinction between primary and secondary sources see Kusek and Rist (2004).

Once data are collected they could be enriched and combined with data from other sources and further analyzed. Additional data could reflect inputs (budget, personnel resources, system of legal education), outputs (number of legal problems, lawsuits, time to disposition of cases, arrest rates) or description of relevant facets of the legal system (legal provisions, unwritten rules, certain aspects of the legal culture). In this section we will focus the discussion on the methodology of collection of primary data.

In relation to measuring the costs and quality of paths to justice, a set of quantitative and qualitative data collection methods have to be considered. Cross sectional survey, diary study and focus group are the methods deemed to be suitable for collecting perceptual data from users of justice. The positive effect of using multiple methods is that the strategy could greatly improve the reliability of the data when different methods are used for triangulation. Our methodological framework, however, recognizes that in certain environments the researchers will be bound for only one of the methods. Different

reasons could back this choice: available resources, level of specification of the units of analysis, access to users of justice etc. Use of differing data collection methods inevitably increases the risk of unreliable comparisons. We will address this risk in Section VI.B.

V.A. Data collection methods

Surveys and focus groups are well known and frequently used methods for data collection in empirical legal research. Our methodological framework does not impose any non-standard meaning of the two methods. With regard to the survey an alternative modes of administration of the research instrument are possible. Several options are possible: in person interviews, phone interviews, mailed questionnaires and web based questionnaires. Selection of particular mode is largely dependent on the specifics of the particular environment where the data collection is carried on. Accessibility of the respondents is the most important factor that should be considered before selecting a strategy (Gramatikov 2007).

The diary method is less conventional in empirical legal research. Its design could be interpreted as variation of the one group observational design with repeating measurements. Its major advantage is the control against memory decay effects which are inherent in the perceptions based measurement strategies. The diarizing also reveals the dynamics of the investigated indicators in the course of the legal procedures. In a MA2J pilot study in the Netherlands the researchers observe with the diary study a panel of users who have initiated a procedure for protection of individual consumer rights. After initial screening survey the respondents receive each 2 weeks a structured questionnaire designed to diarize their current experiences.

The application of the method to justice seeking processes has two interconnected challenges. Lengthy legal procedures are normally developing in cycles of intensive activities followed by long periods of waiting. In these periods of inaction, the respondents usually do not have interactions with the neutral or the other party. On the one hand, in these periods insignificant amounts of costs could be anticipated and only levels of stress and emotions will be relevant. On the other hand, length of legal procedure is positively correlated with the effect of attrition from the monitored panel of users. This could be a particular threat for the internal validity of the study even despite that in our methodological framework the diary is a form of quasi-experimental design. An adequate mechanism for identification of possible interaction between the effect of attrition and measured indicators should be put in place.

With the diary method design our methodological framework will not provide for precise estimates of barriers to justice before a person embarks on a procedure (point D, Figure 1). Nevertheless, with the accepted definition of path to justice our research instrument will probe the respondents for perceptions, attitudes and experiences dating back to the moment when the problem was encountered, recognized as legal and acted upon. As it was said above from these data we will be making assumptions on the scope, intensity and effects of the barriers to justice, experienced by those who did not travel to the end of the path. Hence we recognize that our methodology will yield a more certain estimations with regard to the population that we measure directly and less certain inferences regarding populations which are indirectly targeted by the design.

V.B. Samples

An inevitable challenge in research on civil and criminal justice is the often witnessed lack or inaccessibility of relevant data. For our methodological framework this challenge translates in reduced abilities for the construction of a systematic random sample. When

the basic parameters of population of interest are unknown, the researcher should use less rigid samples such as convenience sample or snow-balling sample. Intrinsic challenge of these designs is the lesser control against different forms of bias.

One source of such bias is the assumed relationship between the willingness of the respondent to take part in the survey and her negative experiences with the procedure. The hypothesized link here is based on the belief that if a person is discontented with the procedure or the received outcome, he will be more willing to participate in order to express his complaints. Without appropriate control group it is difficult to assess the validity of the assumption.

The lack of appropriate research infrastructure tends to drive the investigators to draw samples predominantly from bigger cities. In many countries, especially in developing countries, we could reasonably expect that social stratification is influenced by the scale of the settlement. In the context of measuring access to justice this could mean that the bigger cities could have a slightly higher living standard and the associated higher income, employment and education rates. Courts and legal service providers are more abundant and at least geographically accessible in highly populated urban areas. Thus one could generally expect that the populations of smaller towns and villages will be disadvantaged in terms of access to justice. To discover if there is such a gap, the researcher must put extra-efforts to stratify the sample as much as possible in direction of covering groups that theoretically are expected to have unequal access to justice.

The sample size is another challenge for the measurement of access to justice. How big a sample size should be to yield sufficient results? It is difficult to give an ultimate answer to this question in environment of missing data or hard to reach respondents. From the Central Limit Theorem we could derive that independent variables will approximate normal distribution when the sample exceeds 30 points. More data however provide for more in-depth and reliable results from the data analysis.

V.C. Response items/Scales

Two of our indicators of access to justice (quality of procedure and quality of outcome) do not have normal units of measurement. People do not normally think and say "I'm satisfied with my procedure at 66 points" or "my satisfaction with the outcome is at A level". To make the concept measurable we use a 5 point Likert scale. There is a disagreement whether the individual Likert items could be analyzed as continuous (interval level) data or as categorical (ordinal level).

Most of the costs of justice have meaningful units of measurement. We express the out-of-pocket costs in the respective currency or the spent time in hours, days, weeks etc. Indeed, some non-monetary costs such as stress and emotions need artificial scales. Should we then measure the categories with their meaningful scales instead with some other scales? There are two problems with using Likert scale or a more elaborated scale (i.e. logarithmic scale) to measure costs of justice. Different categories of costs could vary in large intervals. Aggregation of such a large variation in a scale of 5 items significantly reduces the available information. Next, the use of categories to account for the costs makes difficult (if not impossible) calculations of different ratios of interest. For instance, if the investigator wants to weight the value at stake with the monthly income of the respondent, aggregated categories will cause significant uncertainty.

How then to measure adequately then costs of justice? Alternative to the aggregated categories is simply to ask the respondents to report on their actual outlays. Inevitably there will be uncertainty caused by memory decay, unwillingness to report, mixing categories etc. An argument against such a direct measurement is that some

respondents will be unwilling to report precise estimates but will rather prefer categories that offer them some 'cushioning' intervals.

V.D. Indexes

In our theoretical model the three indicators of access to justice are not one-dimensional constructs. As we saw in Section IV costs of justice, quality of the procedure and quality of the outcome are multi-facet categories. Their different dimensions are measured with one or more variable. Fundamental question at the data analysis stage is how to treat the multiple components that belong to one of the indicators. The question is of significant practical importance – the outcome of the measurement is largely dependent on the adopted strategy.

Interpreting numerous items that measure the same construct could be difficult and unintuitive. For instance our research instrument for the quantitative interviews has 21 items measuring the quality of the procedure. Informing the policy makers or the donor community on quality of procedure with such a large set of variables could be uninformative. Instead, we should contemplate construction of an index which is the aggregate measure of the indicator. As a result from our study we could have three distinct indexes (costs of justice, quality of outcome and quality of procedure) or one general index encompassing all indicators. What would be the pros and cons of the two options? One all-inclusive index is more appealing in terms of its ability to directly address the general interest of the measurement effort – accessibility of justice. If access to justice varies on some interval (lets say from non-existing to total access) then there should be some indicator to tell the actual level. A single index if valid and reliable could play the role of a compass on the map of access to justice. However, such an index assumes that the researchers have sufficient knowledge on the compatibility of its ingredients. For instance, if we aggregate costs and quality of outcome, do we suppose that with the increase of cost also increase the satisfaction with the outcome? Such assumptions on the covariance of our indicators are difficult to find in the theory. The example shows how sensible it is to create an index that covers the three indicators without sufficient deliberation of the model and testing it against empirical data.

Important question with regard to the index construction is the weighing of the compounding variables. Simple summation of all standardized variables in an index could reduce the internal validity of the index. Specifically, when the variables are not equally measuring the intended concept the index will be distorted. Meaningful weights could be derived either from the existing data or with a study designed to reveal the preferences of users of justice towards the measured concepts.

V.E. Further improvements of the methodology

How can we improve the research design and what would be the pros and cons? We agree that the perceptions and assessments of the users are indispensable for measurement of access to justice. Just as many other legal phenomena we are facing practical limitations in our quest to discover the objective truth. Certainly direct observations on the barriers to justice from a users' perspective is not impossible but looks unfeasible, especially if the goal is to collect data in numerous jurisdictions. Measuring at point A, Figure 1 where the social problems are recognized as legal problems requires adoption of the *justiciable events* approach. The downside here is clear – significant cost and time investments are required to draw large samples in which the problems can be detected with appropriate level of confidence. Next, research could focus on point D, when the recognized problems enter a specific path to justice. Filing a lawsuit, starting a negotiation or complaining to public authority leaves certain traces. In fact, in many jurisdictions it will be almost impossible to get a grip on the entire population that reached this phase. Another weakness of measuring with cross-sectional

designs at point A or point D is that the results do not account for the fact that many users proceed further from that point and their experience is important part of the access to justice paradigm.

Improvement of the methodology should be an iterative process. Collecting data in pilot projects has a tremendous potential to reveal theoretical, conceptual and methodological problems. What criteria should be used to assess the appropriateness of the methodological framework. First, the researcher could summarize the lessons learned during the data collection phase. How difficult it is to find users of justice? Are the identified paths to justice a coherent concept? Do people tend to share experiences or response rates are low? All these questions are important lessons from the data collection phase. At the next level, the data itself could reveal certain challenges. Univariate distributions and statistics are informative on the construct validity of the measured concepts. Examples given above are illustration of the potential added value that these indicators provide for the better understanding of access to justice. With more sophisticated multivariate methods one could test the overall access to justice model and its components.

VI. Added value of measuring access to justice through the users' perspective

VI.A. Transparency of the paths to justice

Surveying user perceptions on the three indicators of paths to justice has significant potential to make the conflict resolution processes transparent. The collected data could be used to describe the experienced costs, satisfaction with the quality of procedure and outcome. Descriptive statistics are powerful tool for exposing the intrinsic properties of the paths to justice. Figure 3 and Figure 5 are examples of the possible directions for the data analysis stage.

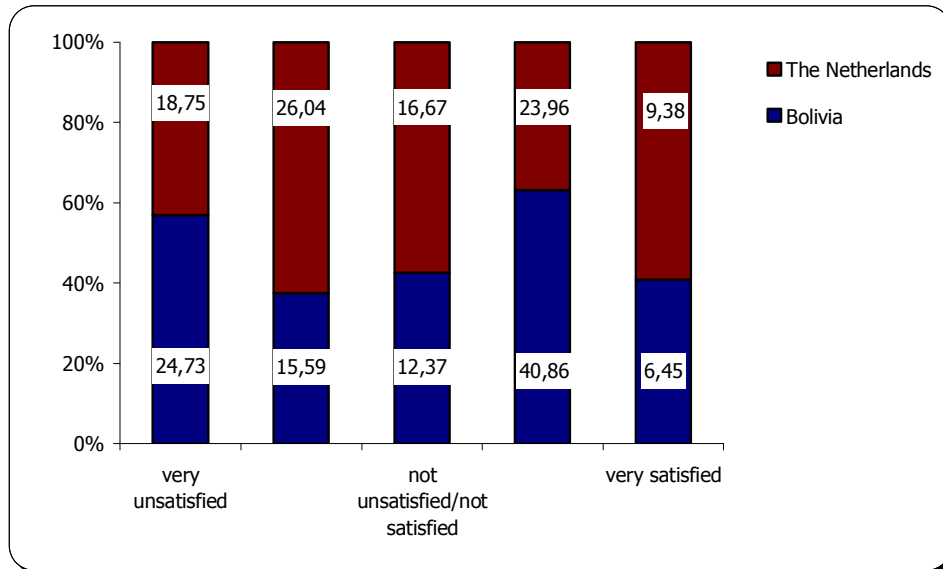
What type of knowledge could be extracted out of the collected data? Costs of justice, quality of procedure and quality of outcome could be analyzed both at the levels of individual variables or at the aggregated index level. The researcher could map the three pillars of the access to justice phenomenon. For a legislator or a donor of rule of law initiatives the measurement methodology will provide vital data for the accessibility of the legal processes put in place as well as the subjective perceptions of the users. Comparisons are possible with alternative paths to justice or with a baseline data collected *ex ante*. Another possible use of the methodology is to monitor the temporal developments on the three indicators of access to justice.

Current and potential users of the path to justice are particular group of users of the knowledge that could be discovered in the data. As we saw above we assume that a large group of users do not proceed to protect their legal rights and interests because of the uncertainties of path to justice. Users could have certain beliefs with regard to the costs of the path to justice but a large part of the potential cost is unknown *ex ante*. Risk aversion is preventing certain number of people to lump the problem. What the data from MA2J could offer the users is knowledge which will make it easier for them to weigh the cost and benefits of a (legal) process. Better assessment of the cost, quality of the procedure and quality of the outcome should lead to improved access to justice.

VI.B. Comparing paths to justice

To what extent could different paths be compared and can we compare paths to justice from different jurisdictions? We will look at the example of comparing two different paths measured in Bolivia and The Netherlands. To simplify the comparison we focus on the perceptions on procedural quality. As one can see in Figure 2 there is a significant variation in satisfaction with procedure in both measured paths. On average the Dutch procedure is rated slightly lower but we can not be certain if this is not result of the measurement error.

Figure 2: Satisfaction with the procedure



What information could be derived from the comparison in Figure 2 and to what extent it can be generalized? Can we say that the Dutch legal system performs at lower level than the Bolivian? Or we should limit our conclusions to the two procedures. After all in Bolivia we measure the performance of administrative agency which provides public service whereas in The Netherlands we investigate the outcomes of administrative adjudication of consumer problems. The nominal value of the values at stake is also different. In the Dutch pilot the users protect much more significant monetary interest. One of the problems we encountered when measuring the ID documents path was that it does not have a valuable object as the immediate stake, but identification documents have a substantial indirect value, because they give access to public services such as health care and education. Finding indications of this value will be difficult.

We should advise against direct comparison of path to justice that address different needs for justice. It is difficult to isolate the impact of the legal problem from the other perceptions related to the procedure. Therefore one can not rule out that the perceptions on quality of the procedure and outcome are not influenced by the legal problem itself. This means that two similar paths to justice could be compared. Again the comparability should be assessed in the context of legal culture and particular elements of the legal system.

To what extent a discrete procedure reflects the status of the overall system to which it belongs? In the case of Geschillencommissie how certain could we be that these levels of costs and satisfaction with the procedure will be anywhere near to another legal procedure or intervention? Legal institutions as all other social institutions are deeply embedded in the social context (Granovetter 1985). In the case of the legal institutions there is however even stronger bond between the different parts of the legal system. The system of normative regulations, body of case law, legal culture and legal education

provide certain homogeneity of the legal institutions. It is highly unlikely that different elements of the broad legal systems develop at heterogeneous directions and speed. However we do not know how strong the internal consistency of the legal system is. Policies and projects could impact positively or negatively certain part of the system without even targeting others. Hence we could ask – is it possible certain dimension of the legal system to develop at different speed as compared with another part or the rest of the system. Projects like the World Bank “Doing Business”[†] insist that it is possible that certain legal procedures could be significantly improved and illustrate this thesis with examples with re-engineered procedures for delivery of public services.

Even if legal institutions are not homogeneous and we could not use single procedures as systemic indicators we could make a bit more certain inferences regarding the overall legal system. By measuring the costs and satisfaction with a procedure designed to address a particular social problem we will be able to map the accessibility of this procedure. We hypothesize that the objective and subjective information on the procedure transcends from the actual users to potential users. Thus when a person experiences a legal problem and develops a need for justice she performs a cost-benefit or cost-effectiveness analysis. To a large extent the two parts of the equation are calculated on the basis of available information. As most people are not repetitive users of the justice system, they will tend to rely on other’s experiences to complete the cost-benefit analysis.

VI.C. Better understanding of users’ experiences

Knowledge of the costs and quality that users experience when they walk a path to justice could provide valuable feedback to suppliers. It helps to identify bottlenecks in solving legal problems. Also, different users could be compared. Transparency could lead to a more informed choice of users for specific procedures and in the end even make it possible to predict use.

Perceptions and assessments of the end-users of the justice systems could be an appropriate ground for evaluating different systemic properties such as accessibility, predictability, fairness, equality etc. The users’ perceptions inevitably will be strongly influenced by the local social and legal culture, social norms, political environment and level of economic development. Within this framework the legal system outcomes are assessed in relation to other phenomena which are part of the local culture. Perceptions of users will take into account the relative position of the justice institutions in the general institutional framework of a jurisdiction and will assess its performance according to the existing standards and expectations. Therefore the measurement from the perspective of the users can reveal the adequacy of the legal system to resolve the existing legal problems.

VI.D. Understanding barriers to justice

In this sub-section of the article we reiterate and demonstrate how investigating access to justice through measuring paths to justice adds value to the existing body of knowledge and drives further the research and policy making in the field. Our point is that perceptions, attitudes and evaluations of users of justice have impact on access to justice in similar cases. This relationship is not adequately captured by existing methodologies for studying access to justice. Next, we think that the choices that people make which exact path to justice to take are informative on the existing barriers to justice. Third, when measuring paths to justice and making inferences on accessibility of justice, the methodological framework is mapping three pillars of quality of the access – costs, quality of procedure and quality of outcome. From the reverse perspective this should

[†] See www.doingbusiness.org

mean that gaps in quality of access to justice is synonymous to a lack of or compromised access.

We do not measure the experiences of those who stayed passive, probably restrained by a certain barrier. However, we measure access to justice through collecting data on the cost, quality of procedures and quality of outcome of dispute resolution mechanisms. There is a strong relation between access to justice as a social fact and the legal system which epitomizes institutions, rules and procedures. When people make decisions on how to solve legal problem they heavily use the diffused social knowledge on cost, quality of procedures and quality of outcome of processes. **We assume that if dispute resolution mechanisms are perceived as expensive than the perceived costs will act as a barrier to justice.** Previous analytical and empirical research suggests that costs of justice and access are negatively correlated. We will test this assumption in focus groups with users of justice and experts with extensive knowledge on the process.

We could also speculate on the relationship between quality of procedure and quality of outcome, on the one hand, and access to justice, on the other. Researchers of procedural quality will claim that overall satisfaction with the procedure will be more influenced by the perceived properties of the procedure (Tyler 1988; Tyler 2006). In this framework, if the process for solving the legal problem is regarded as expensive or substandard than these perceptions will negatively impact the access of others who have similar problems. The quality of the outcome is expected to have similar effect on accessibility of justice. If the person who needs justice knows that the given mechanism will not fully restore or compensate the lost interest, than the perceived probability of failure will play the role of a barrier. The more the claimant believes that the outcome will be of “high quality”, the higher the likelihood that he enters a path to justice.

VI.E. Empirical example 1: Out-of-pocket expenses as barriers on a path to justice

In this sub-section we illustrate the descriptive and explanatory power of the methodological framework. For the purpose we use data from two pilot studies in Bolivia and The Netherlands. Samples of 206 and 141 users of justice respectively in the Bolivian and the Dutch studies took part in the survey. The former sample consisted of individuals who have recently received an outcome of a procedure for obtaining birth certificate or ID document. The sample itself contains two sub-groups – a larger group of 186 persons used short and standard administrative procedure and a group of 20 who invoked a court procedure to solve their problems. In The Netherlands the researchers sent out invitations to approximately 500 individuals who reported a vehicle related consumer problem to the Geschillencommissie[‡] and received an outcome within 12 months before the interview. The Dutch sample is more homogeneous in terms of variance in the legal problem and procedure as compared with the Bolivian study. A notable difference is that the Dutch users were involved in a dispute with a service or goods provider whereas the Bolivian users have travelled a path in which there is no visible other party. There are other differences between the two pilot studies, but these will be discussed in detail in a different paper. Here our goal is to demonstrate certain capabilities of the methodology to inform on the access to justice.

In both pilot studies we asked users of justice about the out-of-pocket expenses they made on their path to justice. According to our definition of a path (see Section III) we recorded monetary outlays made since the moment the person took active steps to resolve the problem until she received an outcome from the neutral third party. Due to

[‡] Consumer dispute commission

the differences in the problems and the legal procedures we used differing costs categories, item scales[§] and data collection modes .

In order to compute the total monetary cost of the investigated paths to justice we combined the costs from the categorical scale categories. Costs of justice were measured in ordinal categories because of the expectation that users will be somewhat less clear about their actual expenditures (see Section V.C). Combining ordinal categories inevitably results in uncertainty in the aggregated variable but in this case we are interested to discover the share of the different cost categories in the total monetary outlays that the respondents in the two pilot studies reported. Measuring costs at interval level, however, will be even more challenging since normally the users will only be able to report with some level of approximation the monetary costs. Opportunity costs as well as emotional costs do not have a natural measurement scale and cannot be added to the total cost of the path to justice without transformations in which the subjective judgement of the researcher induces uncertainty. Therefore measuring all cost categories with ordinal items is deemed as more appropriated and reliable approach.

For each cost category we estimated the individual cost through simple weighting of the responses. We weighted each response with incrementing integer which corresponds to the answering scale^{††}. After computing the weighted cost of the procedure we graphed the percentage with which each cost category participates in the total monetary cost of the procedure (see Figure 3 and Figure 5).

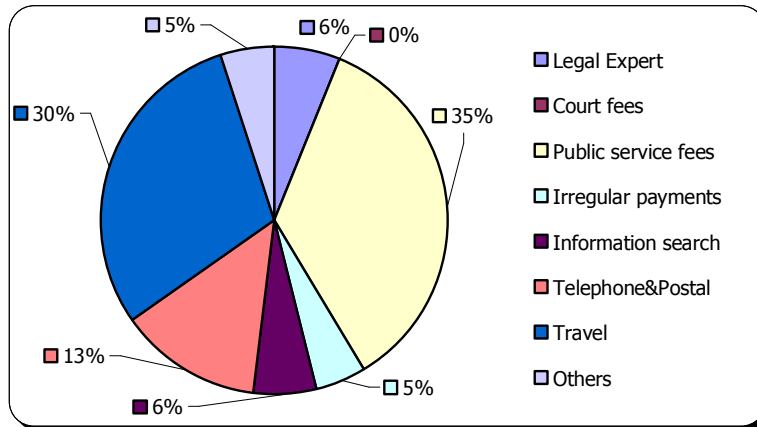
Figure 3 shows that the distribution of monetary cost in Bolivia is not equally distributed among the different types of costs. Travel costs and public service fees together constitute almost 2/3 of the monetary expenses that the respondents experienced on the measured path to justice. This distribution is somewhat consistent with the expectations for administrative procedure. Often the issuance of a birth certificate or ID document is a relatively fast and problem-free procedure and most of the users did not need legal assistance. Searching for information and illegal payments are also small parts of the overall costs of the procedures. More money was spent by users for communication purposes like telephone and postal.

[§] For instance the scale of the money-related questions in Bolivia were coded as follows: 1 (less than 50 Boliviano), 2 (51Bs-100Bs), 3(101Bs-200Bs), 4 (201Bs-500Bs), 5 (501Bs-100Bs), 6 (1001Bs-4000Bs) and 7 'More than 4000 Bs'. In the Dutch pilot study the value of 1 represents monetary value of up to 99€, 2 (100€-199€), 3 (200€-499€), 4 (500€-999€) and 5 'More than 1000'.

^{**} Respondents in Bolivia were interviewed face-to-face in the lobbies of public offices after they have received their documents. In the Dutch survey a web based questionnaire was distributed to the willing participants.

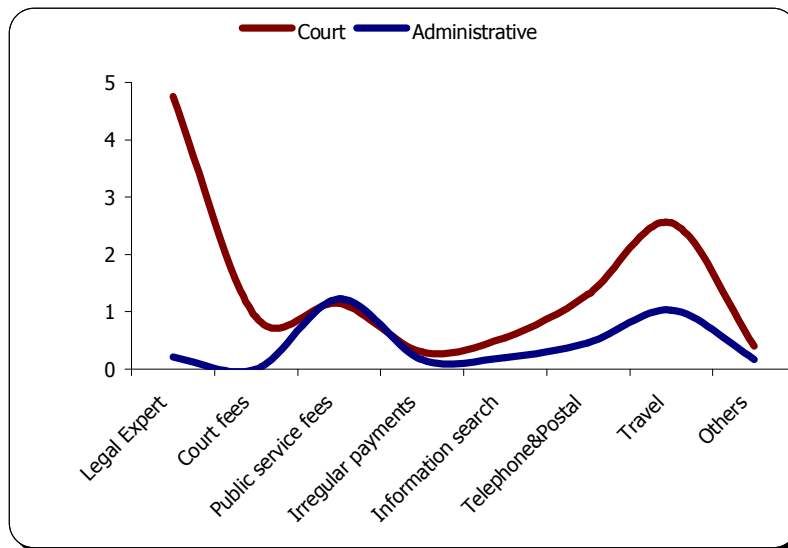
^{††} In Bolivia the weight of zero is applied to respondents who report no expenses in the particular category, 1 to those who pair up to 50 Bs and so forth.

Figure 3: Cost of obtaining birth certificate and ID documents in Bolivia (administrative procedure)



Numerous conclusions could be drawn with regard to accessibility of the administrative procedure for obtaining birth certificates and ID documents. We could assume that major barriers for solving the documents problem are the distance of public offices from the communities and existing service fees. If we compare the administrative procedure to the court procedure (see Figure 4) we see that the former is significantly less costly^{††}. Specifically in the cost categories of legal fees, travel and communications the court procedure requires significantly more monetary resources.

Figure 4: Average costs of court and administrative procedure

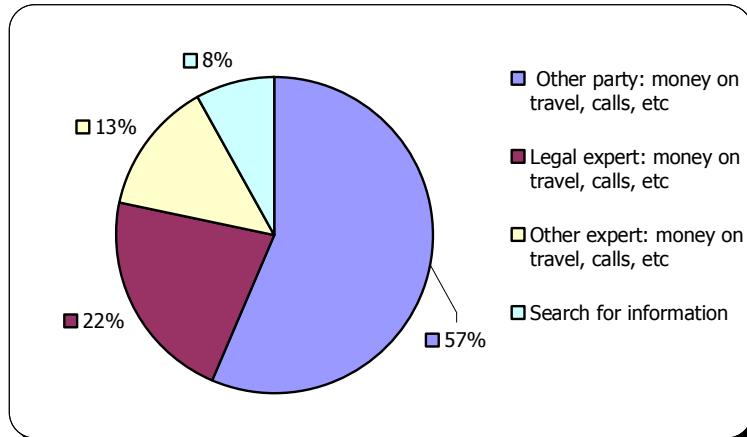


Above we analyzed and compared the costs of two paths to justice. In Section I we discussed that one of the goals of the methodological framework is to provide comparable data on procedures in different jurisdictions. Figure 5 shows the distribution of costs experienced by the users of the studied consumer dispute path in The Netherlands. Straightforward comparison with the Bolivian pilot study would be difficult because of the differences in the used cost categories. More than half of the expenses of those who filed with the Geschillencommissie were spent on contacting the other party – the supplier of goods or services. In Bolivia the active party does not try to resolve a

^{††} T test for means difference $t=-11,36$, $p=,000$

dispute but to exercise a right or to change the legal situation. Therefore the category of 'contacting the other party' is not applicable to the measured path to justice. Different cost categories and varying levels of coding the observed variables make the direct comparisons between procedures in two different countries difficult. Moreover the procedures expose significantly different needs for justice caused by the underlying legal problems.

Figure 5: Cost of solving auto related consumer disputes in The Netherlands



Distribution of costs among the specified costs categories is informative but when considering the accessibility of the procedure we have to take into account the actual reported expenses. For instance, the Dutch users of justice spent most resources on contacting the other party. If we look at the reported expenses, however, we see that half of the respondents made expenses in this category of up to 99 €, 20 % spent between 100 and 199 € and 9% between 500 and 999 €. There is a positive correlation between the values at stake and the monetary outlays made for contacting the other party (Spearman's $\rho = .37$; $p = .00$). Similarly in Bolivia about 68% of the respondents report that they spent less than 50 Bs^{§§}, 18.3% spent between 51 and 100 Bs^{§§}.

Barendrecht, Mulder et al (2006) discuss the feasibility of comparing costs of paths to justice after adjusting the measurement scales to the actual income of the respondents or price levels in the respective countries. Finding the ratio between indicators of personal wealth and the experienced cost of justice will reveal the extent to which justice related expenses act as barriers. Possible alternative approach would be to assess the mean or median cost of path to justice against aggregated measure such as the Gross domestic product per capita or other indicator of standard of living.

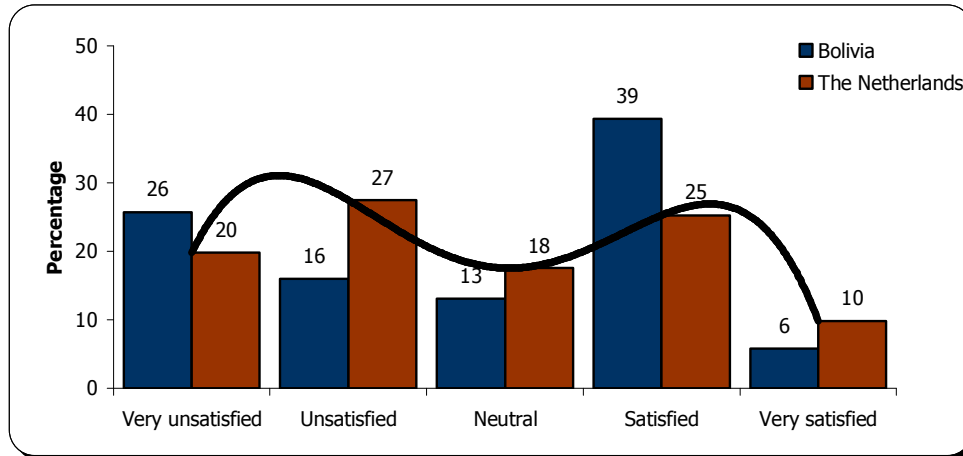
VI.F. Empirical example 2: Legal certainty and perceptions on quality of procedure and outcome

Perceptions on quality of procedure and outcome could inform on the access to justice with the language of uncertainty and risk. As we shall see in Figure 2 the satisfaction with the two measured procedures inhibits significant dispersion. In Figure 6 we see that the

^{§§} Small fraction of 8% reported no out-of-pocket expenses in this category but we must be cautious with this group because normatively every user must pay the service fee in order to obtain an outcome. A large proportion from this group reports that the request for service was rejected which hints that those who paid nothing actually did not travel the same path to justice.

actual distribution of the responses approaches the bimodal distribution. Another finding is that the responses do not tend to group in one of the categories of the scale. Indeed, the most satisfactory category is the less populated in both countries but we see that the satisfaction with the procedure is far from uniform.

Figure 6: Comparison satisfaction with procedure



What could be the implications of the observed distribution for access to justice? Whereas the procedures maintain certain standardization we see that users tend to attach to it different levels of satisfaction. At this stage we do not know what the cause of this variability is. What we know however is that the quality of the procedure is difficult to predict. In other words users of justice face a great deal of procedural uncertainty when they consider their options when a need for justice is present. Whereas the satisfaction with the procedure is uncertain, the users will integrate the level of uncertainty in their decisions. Given a perceived high probability of unsatisfactory procedure a risk averse person will prefer to avoid the risk. This can be done with different strategies which impact the access to justice. A risk averse person could lump the problem if the perceived cost are high and there is high uncertainty with regard to procedural quality and satisfaction with the outcome. Alternative strategy will be to decrease the uncertainty paying additional costs – i.e. legal advice or representation.

If the majority of the responses in Figure 6 were in the categories of ‘satisfied’ or ‘very satisfied’ we could say that the procedure is rather certain in terms of its positive outcomes. In the alternative scenario of negative scoring one could conclude that the users would have a high degree of certainty that the procedure is of low quality. Believe that a process for solving a need for justice will yield low satisfaction with the procedure and/or will result in unsatisfactory outcome will be acting as a barrier to justice. In a hypotheses when the expected procedural or outcome satisfaction is unknown or lies in a wide interval, the user will have to accept higher risk if she decides to follow the path to justice. This risk will be less of a barrier to justice as compared with the case when there is a certain expectation for poor quality or unsatisfactory outcome. Nevertheless, this uncertainty will be hindering certain proportion of people with need for justice to get on the ‘path to justice’.

The hypothesized link between satisfaction with the quality of procedure and quality of outcome and actual behaviour relies on the assumption that knowledge on paths to justice is dispersed in the society. When non-repetitive players have to decide whether to use the external norms and interventions, decisions are based on certain information. This information is not based in personal experiences but from secondary sources. Those who retain a professional adviser will be able to make an informed decision based on the received advice. Others will rely on their social network or media sources for direct or indirect information sources. Our assumption is that the experiences captured in

Figure 6 and Figure 2 reach the public domain in some form. Depending on the problem the diffused social knowledge will reflect the objective truth at different levels of precision.

VII. Conclusion

This paper reports on the challenges related to measuring the costs and quality of paths to justice, building on the experiences in the project "Measuring Access to Justice: The Hague Model of Access to Justice". Since the introduction of the project by Barendrecht, Mulder et al (2006), progress has been made on various theoretical and methodological issues. The framework has been tested on two paths to justice within two very different jurisdictions. Many issues still need to be resolved and many element of the emerging measurement methodology have to be refined and improved. Particularly, the measuring instrument needs to be exposed to more different contexts. Empirical testing of the instrument for more paths to justice for more legal problems will further calibrate and improve it.

References:

- Barendrecht, M., P. Kamminga, et al. (2008, 5 February 2008). "Priorities for the Justice System: Responding to the Most Urgent Legal Problems of Individuals." TISCO Working Paper Series on Civil Law and Conflict Resolution Systems, from http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1090885.
- Barendrecht, M., J. Mulder, et al. (2006). "How to Measure the Price and Quality of Access to Justice." from http://papers.ssrn.com/sol3/papers.cfm?abstract_id=949209.
- Bies, R. J. and D. L. Shapiro (1987). "Fairness judgments: The influence of causal accounts." Social Justice Research **1**: 199-218.
- Bies, R. J. and D. L. Shapiro (1988). "Voice and justification: Their influence on procedural fairness judgments." Academy of Management Journal **31**(3): 676-685.
- Garfield, M. (2005). "Enhancing Poor People's Capabilities Through the Rule of Law: Creating an Access to Justice Index." Washington University Law Quarterly **83**(1): 339-360.
- Colquitt, J. A. (2001). "On the dimensionality of organizational justice: A construct validation of a measure." Journal of Applied Psychology **86**(3): 386-400.
- Currie, A. (2005). "A NATIONAL SURVEY OF THE CIVIL JUSTICE PROBLEMS OF LOW AND MODERATE INCOME CANADIANS: INCIDENCE AND PATTERNS." Retrieved 04/12/2007, 2007, from <http://fcj-fcj.org/docs/2006/currie-en.pdf>.
- European Commission for the Efficiency of Justice (2005). European judicial systems. Facts and figures on the basis of a survey conducted in 40 Council of Europe member states. Strasbourg, Council of Europe Publishing.
- Genn, D. H. (1999). Paths to Justice. What people do and think about going to law? Oxford, Hart Publishing.
- Gramatikov, M. (2007, 28/02/2008). "Methodological Challenges in Measuring Cost and Quality of Access to Justice." TISCO Working Paper Series on Civil Law and Conflict Resolution Systems.002/2008, from http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1099392.

- Granovetter, M. (1985). "Economic Action and Social Structure: The Problem of Embeddedness." American Journal of Sociology **91**(3): 481-510
- Klaming, L. and I. Giesen (2008) "Access to Justice: the Quality of the Procedure." from http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1091105
- Kusek, J. Z. and R. C. Rist (2004). A Handbook for Development Practitioners: Ten Steps to Results-Based Monitoring and Data Evaluation. Washington, D.C., The World Bank.
- Lind, E. A. and T. R. Tyler (1988). The Social Psychology of Procedural Justice. New York, Plenum Pub Corp.
- Pleasence, P., A. Buck, et al. (2004). Causes of Action: Civil Law and Social Justice. London Stationery Office.
- Pleasence, P., D. H. Genn, et al. (2003). "Causes of action: First Findings of the LSRC Periodic Survey." Journal of Law and Society **30**(1): 11-30.
- Thibaut, J. and L. Walker (1975). Procedural justice: A psychological analysis. Hillsdale, NJ., Erlbaum.
- Tyler, T. R. (1988). "What is procedural justice?: criteria used by citizens to assess the fairness of legal procedures." Law & Society Review **22**(1): 103-135.
- Tyler, T. R. (2006). Why people obey the law. Princeton Princeton University Press.