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Voices of the Vulnerable:

Promoting Access to Justice
in Sub-Saharan Africa

Waleed Haider Malik and Clara Lahoud Maghani

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1818 H Street NW
Washington, D.C. 20433
Telephone: 202-473-1000

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Waleed Haider Malik, and Clara Lahoud Maghani
November 2, 2023

Voices of the Vulnerable:

Promoting Access to Justice in Sub-Saharan Africa

By

Waleed Haider Malik and Clara Lahoud Maghani
with¹

¹ Hon. Justice Egbe Hillman, Hon. Justice Ntyam Mengue, Prof. Christian Zamo, Mr. Abel Bove (Chapter 2 - Cameroon), Former Vice President of the Federal Supreme Court Dr. Menberetsehai Tadesse, Prof. Mebratu Gebeyehu, Former President of the Federal Supreme Court Hon. Kemal Bedri (Chapter 3 - Ethiopia), Mr. Roberto Panzardi, Hon. Justice Julia Sarkodie-Mensah, Prof. Sonnia-Magba Bu-Buakei Jabbi and others (Chapter 4 - Sierra Leone), Ms. Rose Aiko (Chapter 5 Zanzibar), Mr. Artur Alik Lagrange, Ms. Paula Gonzalez (Chapter 7 - Gender and Marital Gap Analysis)

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Acknowledgments

The authors would like to thank The Chief Economist Office, Africa Region, under the leadership of Chief Economist Andrew Dabalen, for helping to ensure that this report became a reality, including Beatrice Berman, Vijdan Korman, Nora FitzGerald, and Kenneth Omondi.

We would also like to express deep appreciation to Prof. Won Kidane for his review and guidance that helped us complete the book.

We must also acknowledge our ongoing gratitude to the many who guided, commented, and contributed to the report over a period of time that was overshadowed by the COVID-19 pandemic. These include Markus Goldstein, Roberto Panzardi, Abel Bove, Cia Sjetnan, Elsa Araya, Former Chief Justice Mohamed Chande Othman Chande, Chief Justice Prof. Ibrahim Hamis Juma, Hon. Hussain Kattanga, Dr. Paul Kihwelo, Hon. Zahra Maruma, Berhanu Ayane, Lilit Petrosyan, Bryan Kelly, Mahnoor Malik, Mekonnen Firew, Vijdan Korman, Lywam Assefa, Andry Rasoanindrainy and several others.

Finally, we would like to acknowledge the enormous background work that was leveraged to generate this report. This included household access to justice surveys in select countries to promote learning among stakeholders under the Human Rights Nordic Trust Fund, a team led by Roberto Panzardi, Abel Bove and Waleed Malik. In addition, we are grateful for the access to justice modules in Afrobarometer surveys conducted in collaboration with the State and Peace Building Fund, a team led by Roberto Panzardi and Waleed Malik and the regional justice analysis carried out as part of development of the Tanzania justice modernization project, a team led by Waleed Malik, Deborah Isser, Denis Biseko and Clara Maghani.

Caveat

The purpose of this book is to foster continued learning and dissemination of materials that support access to justice for Africans. This analysis of a decade of data gathering and knowledge building is building block toward a better future. Although the surveys, background reports and analysis are pre-pandemic, this data is significant and the findings useful to continue knowledge exchange on access to justice. Judicial reform and transparency continue to be growing challenge in Sub-Saharan Africa and beyond. The authors hope this work prompts further discussion.

Executive Summary

Limited access to justice is a root cause of underdevelopment, social unrest, and conflict. Expanding access to all—and especially vulnerable groups including women, the young, small business owners and the poor—is clearly paramount for a peaceful and prosperous continent.

Justice means different things to different people, particularly the multiple actors who design and administer justice systems and affect the outcomes.² Elected leaders eager to respect aspirations for a fair society with human rights and accountable governance, for example, consider justice a public good. Judges, lawyers, and service providers view justice as a moral duty to guarantee fairness before the law. Business leaders look to courts to resolve contract disputes and keep transaction costs and risks low.

Yet the voices of vulnerable groups, who are the most impacted when justice fails, are not often heard in discussions regarding justice systems. This book aims to boost knowledge and improve decision making by exploring the perspectives of what justice means to the most vulnerable people and how to improve their access to justice.

The book draws upon research funded by the World Bank's Nordic Trust Fund on justice access needs and barriers.³ The research involved over 3,000 vulnerable women, men, and youth from Cameroon, Ethiopia, Sierra Leone, and Zanzibar, an autonomous region in Tanzania.⁴ It also explores, in a separate chapter, gender gaps in judicial needs in Cameroon, Ethiopia, Mauritania, Sierra Leone, and Zanzibar, notably indicating that women are more prone to report a need for judicial services related to family and human rights' legal grievances, and men more often for services related to property rights, business, and labor issues.

The book also draws on data from Afrobarometer, a pan-African, non-profit survey research network that conducts public attitude surveys on democracy, governance, economy, and society.

Numerous factors complicate efforts to improve access to justice in Sub-Saharan Africa (SSA). The nature of formal justice systems almost invariably reflect the systems of the primary colonizers, either the United Kingdom or a continental European power. These coexist with entrenched informal systems, largely based on more ancient traditional judicial practices. Sometimes this coexistence is peaceful, sometimes not.

Modern Cameroon, for example, is a diverse country combining territories formerly controlled by the British and the French, featuring a hybrid system of customary law, French-derived law, British-derived law, and state-enacted laws. Yet, a steady series of reforms has brought the country close to realizing its dream of establishing a single legal system.

In Ethiopia, among the oldest of countries, the overwhelming perception of the justice system was positive compared with the other countries in the survey study. Yet the vulnerable face many barriers, the most onerous being prohibitive lawyer costs, persistent corruption, long delays in legal processes, and absent or limited access to information on legal aid rights, and the justice system.

Sierra Leone continues to recover from protracted civil war. As an example of justice issues, literate women account for about 24 percent of the population. These women are marginalized, unlikely to know the law or understand legal procedures, and unable to afford legal representation.

In the semi-autonomous region of Zanzibar, survey respondents considered formal courts more difficult than social and religious courts. Yet opinions were split about the accessibility of law enforcement institutions versus courts.

A common thread among country respondents is the perceived corruption and lack of trust in formal courts and a sense that justice is a privilege of the rich to the detriment of the poor. Multiple barriers to access to justice explain this, including high

² From a human rights perspective, UNDP (2005) defines access to justice as "...people's ability to solve disputes and reach adequate remedies for grievances, using formal or traditional justice systems. The justice process has qualitative dimensions, and it should be in accordance with human rights principles and standards."

³ The World Bank established the Nordic Trust Fund, with contributions from Denmark, Finland, Germany, Iceland, Norway, and Sweden, to promote human rights goals.

⁴ The research also collected information on Tanzania proper.

costs, a lack of information, protracted delays in dispute settlement, high corruption while navigating governmental systems, and weak or unaffordable transport to courts and other institutions far from home.

Numerous institutional challenges also hinder formal justice, compounded by a general preference for customary or traditional systems, which are frequently closer, cheaper, and culturally and linguistically more familiar.

Justice Systems in Sub-Saharan Africa Effects of Colonial Period and *Shari'a*

With few exceptions, African countries are former colonies that secured independence roughly 60 years ago. The European colonial powers did not impose national governance structures on the colonies until the late 19th century. But they did so in the Berlin Conference of 1884, dividing, occupying, or claiming territories covering nearly the entire continent and drawing the boundaries that would later mark the borders between independent African states. These colonial histories continue to shape legal and judicial systems today.

All European colonizers relied on a system of indirect rule and left the management of purely local affairs, including dispute resolution, in the hands of traditional authorities (or those they selected for that role). This meant that for most indigenous citizens, the formal state judicial system (along with many other state organizations) had little relevance. In urban centers, the state system prevailed, though smaller disputes involving only African parties were handled by indigenous systems. Over time, Africans began to train as lawyers either to represent clients or to participate in the lower levels of the state system.

During the era of independence, judicial institutions introduced by the colonizing countries were generally retained by the new governments, but with modifications. Some countries, particularly the former British colonies, tended to follow reforms adopted by their former colonizer in their domestic courts. Efforts were also made to deal with traditional systems, often by creating a lower level of informal courts (such as the former native courts introduced by the British), clarifying the roles of each judicial body, or even codifying traditional law so it could be used in ordinary court practices.

In countries with significant Muslim populations, the treatment of *Shari'a* courts was somewhat different. These courts were often recognized as part of the formal judiciary, but their jurisdiction was limited to certain types of conflicts, or they only heard cases when the parties agreed to their use (such as in Ethiopia, Kenya, and Nigeria).⁵

Although the complexity of the interactions between the civil, traditional, and religious judicial systems may seem problematic, it can provide multiple prospective entry points and potential counterparts for reform projects. In Botswana, for example, the traditional or customary courts are fully integrated within the main judicial system and rule on division of property, including matrimonial property, while performing other functions.⁶ In Zambia, where the majority of the land is in rural and peri-urban areas, customary courts help to promote land administration.⁷

For the most part, the influence of formal state structures remains limited in SSA. Relative to population size, the region's countries tend to have minimal formal justice systems compared to other regions. Police forces remain small, and the ratio of judges to inhabitants is usually about 1 to 100,000 (as opposed to 8.1 for Latin America and 15.2 for Western Europe).⁸

The number of prosecutors is also low and public defense is often nearly non-existent. While the number of lawyers is gradually increasing as countries develop their own law schools, the environment is still woefully inadequate to fill state positions and provide services to private clients. Even in South Africa, in what may be considered a best-case scenario, only 17,000 attorneys serve a population of 45 million. Malawi has just 77 lawyers for 11 million people.⁹

Most services are concentrated in urban areas, out of reach to millions of Africans. Yet despite

⁵ In Nigeria, however, there is a more recent trend for some states to adopt *Shari'a* as their official law.

⁶ [https://cms1.gov.bw/taxonomy/term/124#:~:text=The%20traditional%20or%20customary%20courts,been%20dissolved%20\(decree%20nisi\)](https://cms1.gov.bw/taxonomy/term/124#:~:text=The%20traditional%20or%20customary%20courts,been%20dissolved%20(decree%20nisi)).

⁷ Functions include the allocation and administration of land and the resolution of conflicts and disputes. https://pdf.usaid.gov/pdf_docs/PA00SVP9.pdf

⁸ Figures are from the World Bank, CEPEJ (2005) for Western Europe and from CEJA (2005) for Latin America.

⁹ Africa Justice Note and Guidelines, World Bank AFTPR Task Force, 2010, p. 8

increasing urbanization, physical access to sector services remains limited and estimates in most African countries suggest that as much as 85 percent of populations still rely on traditional or religious justice systems.¹⁰ Most citizens, even those not facing additional social and cultural barriers because of their gender or other vulnerable status, must still contend with difficult geographic, linguistic, financial, and procedural barriers in accessing the formal judicial systems.

Several countries are contending with these enormous challenges by training paralegals, who work with the judiciary, prisons, police, and traditional leaders. For example, the Paralegal Advisory Service Institute in Malawi works with prison officers to screen prisoners to identify those who are in prison unlawfully or inappropriately¹¹. Because of a shortage of lawyers in Sierra Leone, *TIMAP for Justice* paralegals help women and other disadvantaged groups access justice.¹²

Civil society organizations, working with the state agencies of the justice sector, have also been helping to meet the demand for legal assistance (particularly on family issues, sureties, land disputes, and criminal cases) from poor, rural-based populations. In addition, the World Bank's Gender and Law Program has done important work to improve women's access to justice in 13 SSA countries. Furthermore, *Women, Business and the Law Report* of the World Bank documents global progress toward legal gender equality. It showcases how countries decide to remove legal barriers for women and create the foundation for the reform process.

Calls from civil society to make justice more accessible for businesses and individuals alike have encouraged the development of traditional and

alternative dispute resolution mechanisms that can relieve pressure on the formal justice sector. Formal institutions are then responsible for ensuring that the laws are implemented justly in coordination with traditional and alternative forums and under the watchful eye of civil society. Civil society organizations advocate for the rights of business and (often poor) individuals and work directly with clients to empower them to exercise their rights.

Given the importance of institutional strengthening, it is essential that rule of law projects be carried out in appropriate ways that are tailored to local needs; failure to perform the necessary analysis before launching projects may only lead to results that are of little consequence to the local community.

In the following chapters, the legal systems of Cameroon, Ethiopia, Sierra Leone, and Zanzibar are examined to demonstrate the importance of healthy interaction among these agencies in promoting rule of law and strengthening the institutional capacity of SSA countries. Each chapter presents the political context of the country, followed by an overview of the institutional framework, judicial structure, and legal framework. The scope, results, and conclusions of the Nordic Trust Fund surveys concludes each discussion. Finally, a cross-country comparison delves into the main barriers limiting access to justice, with a brief conclusion and recommendations.

Given the call in the United Nations' Sustainable Development Goal (SDG) 16 to "access to justice for all," the book stresses the importance of promoting greater knowledge among policymakers that can lead to more robust and fair judicial systems.

¹⁰ Figures are from CEPEJ (2005) for Western Europe and from CEJA (2005) for Latin America.

¹¹ <https://acjr.org.za/ppja/english/countries/malawi>

¹² <https://namati.org/network/organization/timapforjustice>

Introduction

Substantial barriers still inhibit access to justice across Africa. Based on national surveys in 36 African countries, long delays, high costs, corruption, complex legal processes, and a lack of legal counsel are major obstacles, with vast differences between relatively good access in Botswana and dismal indicators emerging from places such as Sierra Leone. Afrobarometer

Throughout SSA, authorities crafting justice policies seldom hear the voices of the vulnerable.¹³ Indeed, policymakers usually ignore the perspectives of ordinary people when formulating policies and preparing development plans, according to the research conducted by Afrobarometer, the pan-African, non-partisan research network. This exclusion has fueled a pervasive lack of trust in public institutions, undermining societal development, peace, and harmony.

These ordinary people believe the rich and the politically powerful heavily influence the setting of priorities and are the main beneficiaries of

development activities in the justice sector, and in general. Courts may be set up in a particular area simply to please someone important, even though demand for such services is low, for example. Likewise, authorities may fail to hire sufficient public prosecutors to implement anti-corruption measures or to prosecute organized crime committed by the politically influential.

Meanwhile, ordinary people and victims of crime bringing complaints against law and justice providers for unduly postponing trials or for seeking bribes to move paperwork, and the like, are harassed and intimidated into silence.

Filling data gap

To help fill a major data gap in views in justice issues, the Nordic Trust Fund (NTF) surveyed vulnerable groups, how they perceive justice, and the limitations and barriers they face in getting issues resolved and rights enforced. The initiative also aimed to promote learning among the key agents of justice—especially the duty bearers such as judges and other policymakers—to build ownership, enhance knowledge, and help reduce resistance to change. It sought to help these duty bearers to analyze data, identify the serious barriers to justice access, and outline actions that are informed by international good practice, to address the obstacles.

The intention of this book, and its findings concerning serious barriers to justice, is to assist with the pursuit of justice on the continent and help policymakers meet commitments under

Sustainable Development Goal (SDG) 16, the promotion of peaceful and inclusive societies, through proactive actions. The report also bring attention to the voices of the vulnerable, and their perceptions about how far from justice they feel.

There are multiple actors who administer these systems, affecting design and outcomes.¹⁴ Elected leaders who aspire to respect the aspirations of the people and achieve a fair society with equal human rights and accountable governance, for example, consider justice a public good. Judges, lawyers, and service providers view justice as a moral duty to guarantee fairness before the law. Business leaders frequently focus on contract disputes and keeping transaction costs and risks low. And public-sector institutions view justice as the enforcement of regulations, including tax policies and other revenue generation arrangements, and control over corruption.

¹³ For “vulnerable segments,” which the book defines as women, young people, small businesses, and poor people, access to justice (including rights’ protection) is paramount for a peaceful and prosperous Africa. The research behind the book deployed household surveys, individual in-depth interviews, and focus group discussions and consultations to gain the views of these groups.

¹⁴ From a human rights perspective, access to justice can be defined as “...people’s ability to solve disputes and reach adequate remedies [solutions] for grievances, using formal or traditional justice systems. The justice process has qualitative dimensions, and it should be in accordance with human rights principles and standards...” UNDP (2005).

SSA citizens expect protection of their rights, personal safety, and peace, and when systems malfunction, citizens, especially the poor and vulnerable women, bear the brunt. Too often, efforts to exercise rights or enforce contractual obligations run into legal and administrative bottlenecks. Women are frequently subject to undue bias and discrimination in land-ownership disputes. People go unpunished for committing domestic violence, and lengthy or even unresolved

divorce and inheritance matters destroy families. The poor generally also face high costs and administrative hurdles, compounding feelings of exclusion and undermining confidence in the legal system.

In this context, when the rich and powerful are perceived to benefit from court delays, especially when the poor are locked up awaiting trial, this culture of impunity encourages lawlessness and fuels crime.

Root cause of underdevelopment

Lack of access to justice is therefore, and perhaps not surprisingly, a root cause of underdevelopment, social unrest, and conflict in Africa. According to Acemoglu and Robinson (2012), justice system weakness undermines economic opportunities.¹⁵ This is because judicial institutions are crucial to enabling investment. Douglas North, in his book *Institutions, Institutional Change and Economic Performance*, notes that lack of low-cost contract enforcement is the “most important source of both historical stagnation and contemporary underdevelopment in the Third World” (North 1990).

Women’s access to justice, meanwhile, is a major constraint on overall access, complicated in many parts of SSA by high domestic violence, discrimination, and crime.¹⁶ Gender-based legal differences constrain women’s ability to make economic decisions in a variety of ways, with often far-reaching consequences for women’s access to justice, according to World Bank (2015). Chapter

7 explores gender-related factors in need for justice services in Cameroon, Ethiopia, Mauritania, Sierra Leone, and Zanzibar

There is often a critical disparity between the laws that are passed and the ability or willingness to enforce them. The World Development Report 2017 (World Bank 2017) on governance and the law highlights this gap in many countries. The report offers recommendations for addressing a dearth of legal infrastructure and lack of capacity building, as well as other weaknesses that prevent access to justice in fragile situations and among vulnerable people.

Civil conflict can also be exacerbated by a lack of justice. Unrest in the Horn of Africa, the Great Lakes Region, northern Nigeria, and the Sahel are perpetuated by injustice, poor accountability, terrorism, poverty, and exclusion of the vulnerable from the benefits of society.

Comparison with other regions

Judiciaries in SSA rank lower than other regions, according to the World Bank’s Country Policy and Institutional Assessment scores, a key indicator for allocating concessional financial assistance to low-income and fragile countries in Africa.¹⁷ For example, with a score of 2.7 on property rights and rule-based governance—which includes the performance of rule of law and justice entities as a subset—the region ranks lower than Latin America and the Caribbean (3.2), East Asia and Pacific (3.1), Europe and Central Asia (2.9), and the

South Asia Region (2.8) (figure 1). Poor access to justice services, alongside the corrosive effects of corruption, helps explain this underperformance.

SSA policymakers need to assess weaknesses and institute policies that can bring justice services closer to the people, as well as to radically combat

¹⁵ Weaknesses in law and justice undermine the broad distribution of political rights that are essential for people to hold governments accountable and make it responsive to citizens, and that enable them to take advantage of economic opportunities (Acemoglu and Robinson 2012).

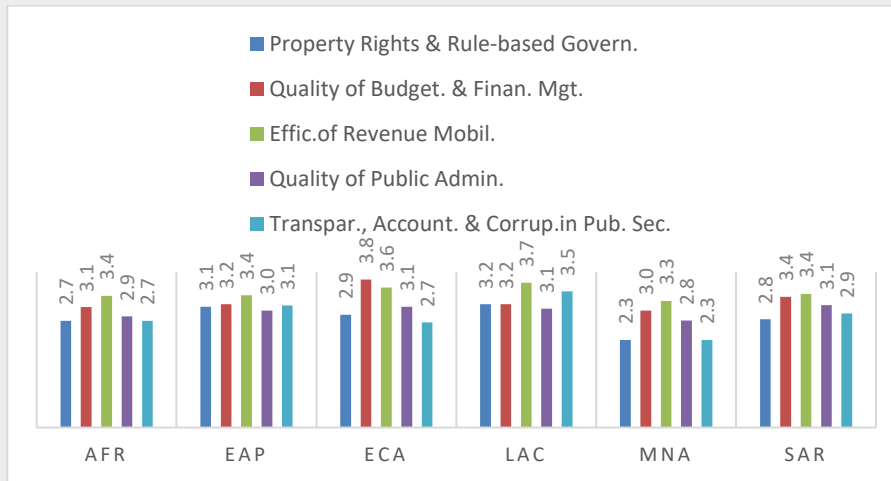
¹⁶ World Bank (2008) defines crime as an antisocial act that violates a law. Violence is intentional use of physical force, threatened or actual, that can lead to injury, death, psychological harm, maldevelopment, or deprivation. This undermines the security of citizens and violates the fundamental right to live and develop in a safe environment (World Bank 2008).

¹⁷ World Bank. CPIA Africa. Data. <http://datatopics.worldbank.org/cpia/>.

corruption (see figure 2).¹⁸ Critically, this requires robust data and evidence-based knowledge sharing so that policy decision making can better

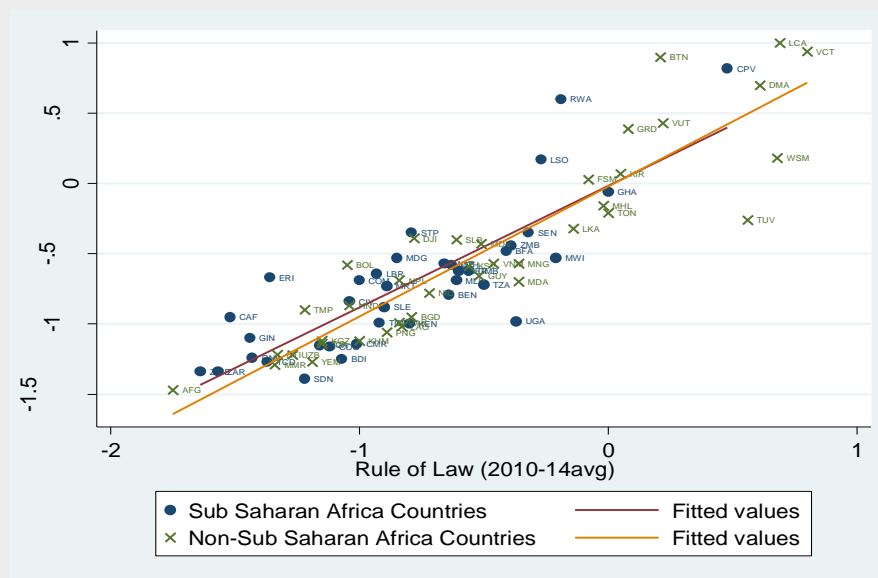
target interventions to the most vulnerable and other strategic areas.

Figure 1 | Policies and Institutions, Sub-Saharan Africa versus Other Regions



Source:
Note:

Figure 2 | Relationship between Rule of Law and Control of Corruption



Source:
Note: World Governance Indicators for 76 IDA countries.

¹⁸ At the recent global Anti-Corruption Summit in London, former World Bank President Jim Yong Kim outlined the notion of “radical transparency” to reduce or eliminate corruption. . Many countries committed to expose corruption within public sectors, punish the corrupt, and support those suffering its ill effects. They agreed to review public procurement procedures to increase transparency. They committed to make the exchange of tax information easier to avoid tax-haven countries and pledged to strengthen institutions of accountability in all branches of the state and work all parties to accelerate implementation of the UN Convention against Corruption (Government of the United Kingdom).

Data for policy decisions is generally weak or lagging in SSA's public and economic sectors,¹⁹ and even more deficient for justice sector institutions.²⁰ This is especially true of data that reveals the basic views of citizens (demand-side data) on institutional performance, access to justice services through the courts and other entities such as the police, prosecution services, bar associations, and so on.

Budget shortfalls, complex institutional arrangements, privacy concerns, legal deficiencies, and the simple lack of attention to citizens' perspectives are some of the main reasons behind these gaps. Citizens, especially vulnerable groups, are often unaware of or unable to pay court fee or, lawyer fees. Many don't know where to file a case, or who does what in the judicial sector.

Institutional and administrative data on the supply side are not readily available or produced in many jurisdictions.²¹ This includes information such as the number of judges and staff in the formal court system, court case backlogs, low clearance rates, and protracted procedures.

In view of these multiple considerations, the Nordic Trust Fund project's research set up a multi-

disciplinary team with a minimum of one judge, one statistician, and one institutional expert per country. The arrangement built in-house capacity, and encouraged ownership and follow-through on recommendations along with stakeholders.²²

This book examines the findings of the project case studies to promote better decision making that can improve access to justice.

As noted, Africa's complex justice sector closely reflects the colonial legacy, even after decades of independence. In SSA, 18 countries follow the civil law legal tradition of the former continental European colonial governments, 12 the common law tradition of the United Kingdom, and the rest mixed common and civil law or Roman-Dutch law traditions.

The countries of the Nordic Trust Fund project reflect hybrids (Cameroon), civil law traditions (Ethiopia), common law (Sierra Leone), and common law (Zanzibar) systems. The countries also vary by economic size, political system, poverty rate, and urban-rural distribution of population.

Formal versus traditional justice systems

Formal courts and traditional systems coexist, and each has a unique role and function. But the formal systems lack capacity, and are underutilized, even though the sector typically see formal justice mechanisms as critical for long-term economic and social development, which includes meeting international human rights obligations. By contrast, about 82 percent of people in SSA prefer traditional systems for community disputes, rather than formal courts, according to the Afrobarometer Round 5 survey. This typically mirrors the proportion of formal and informal economies in many SSA countries.

Many citizens resort to formal mechanisms for financial matters involving people from different tribes and communities, or are related to land or family inheritance. Therefore public-sector institutions have a key role to play in resolving and enforcing awards and agreements.

The positive aspects of both formal and informal systems need strengthening to promote peace and harmony, build respect for tradition and culture, and enforce contracts and equal rule of law enforcement. Governments should adopt

¹⁹ SSA countries periodically prepare economic surveys, poverty reports, and household expenditure and consumption analyses. But their frequency and quality remain inadequate for long-term policy making. And SDGs call for scaling up data generation for decision making based on solid evidence and underpinning reforms. Efforts need to include data about the formal judicial system and related entities to strengthen rule of law and contract enforcement.

²⁰ Performance measurement typically entails identifying inputs and outputs while accounting for changes in quality. Any analysis of value for money requires assigning a price to outputs and inputs. But the characteristics inherent to a judicial system make the measurement of its performance complex and difficult. The "output" of a justice system, for example, is an intangible, indivisible service, with a potentially enormous externality value that is difficult to compare with its "inputs" (Malik 2007).

²¹ Good examples in other regions include the Commission for the Efficiency of Justice report in Europe and the Latinobarometer report in Latin America. These collect and disseminate significant supply and demand-side data for justice sector policy making. The World Bank/European Union Business Environment and Enterprise Performance Survey and the Doing Business reports are likewise offer useful repositories of justice sector statistics and patterns and perceptions of business court users.

²² The action research team, supported by a technical team, offers training to leaders, guides them in the development of survey instruments, helps supervise the household survey team comprised of enumerators and data analysts, carries out data analysis, and prepares research findings (see the methodology section).

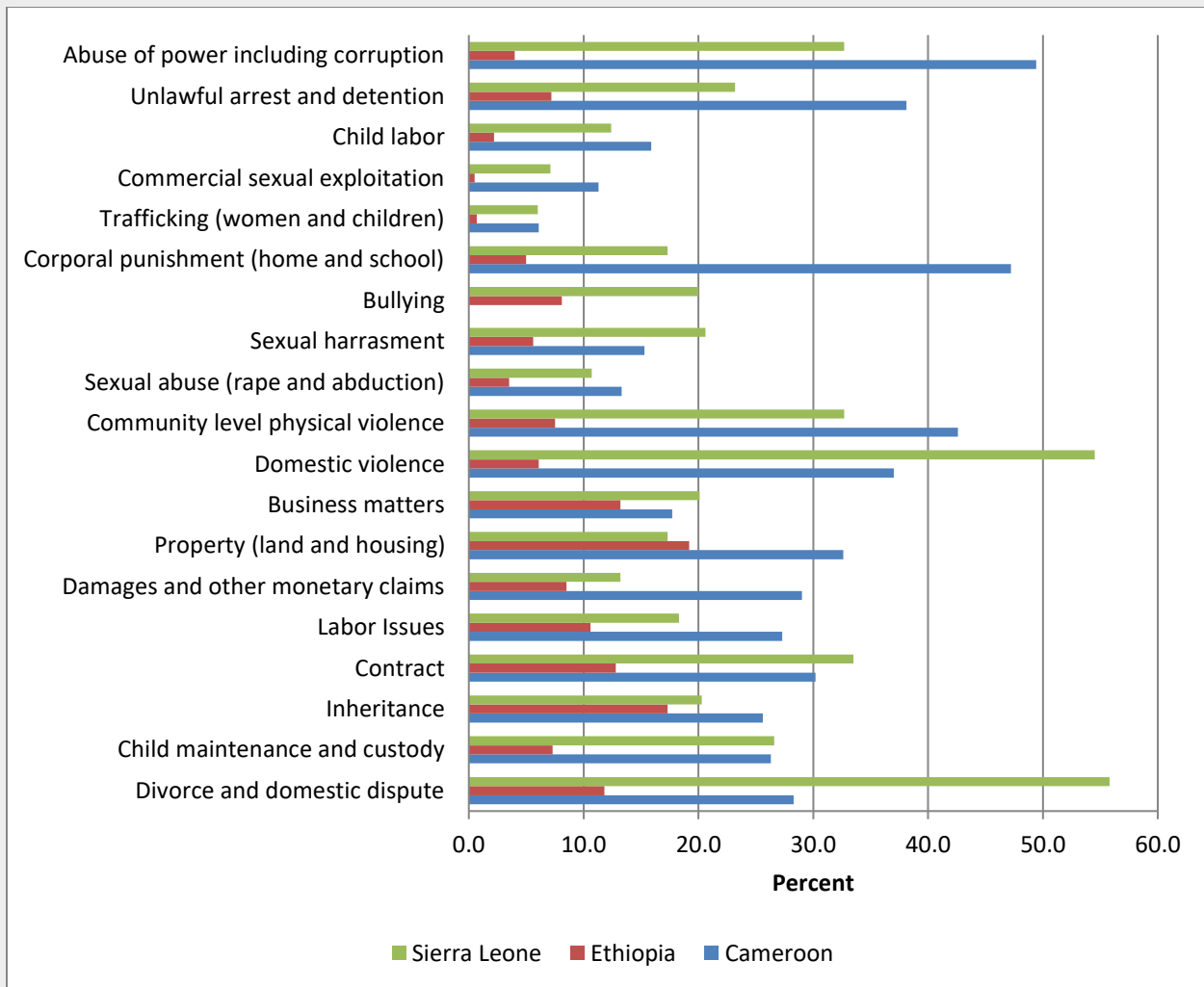
measures that encourage better synergy and accommodation of human rights principles and norms for citizens when they access justice in informal or formal systems.

The book focuses on formal court system users and explores options for expanding access to justice for vulnerable groups. This is because formal adjudication and conflict resolution have a distinct complementary role in society and are more

closely tied to the economic development priorities of local and international investment and the protection of human rights and principles.²³

Indeed, for long-term economic development priorities, the World Bank's World Development Report 2017 on Governance and the Law calls for closing gaps in the institutional performance of formal law and justice.

Figure 3 | Legal and Judicial Issues Reported by Vulnerable Households in Sub-Saharan Africa



Source: NTF surveys reported in the book

²³ Traditional justice systems are sometimes seen as biased against women and the poor, as tribunal practices and traditions may be counter to modern legal standards of equal protection and due process. Some traditional systems assign less weight to the testimony of unmarried women or people of different tribes, for example.

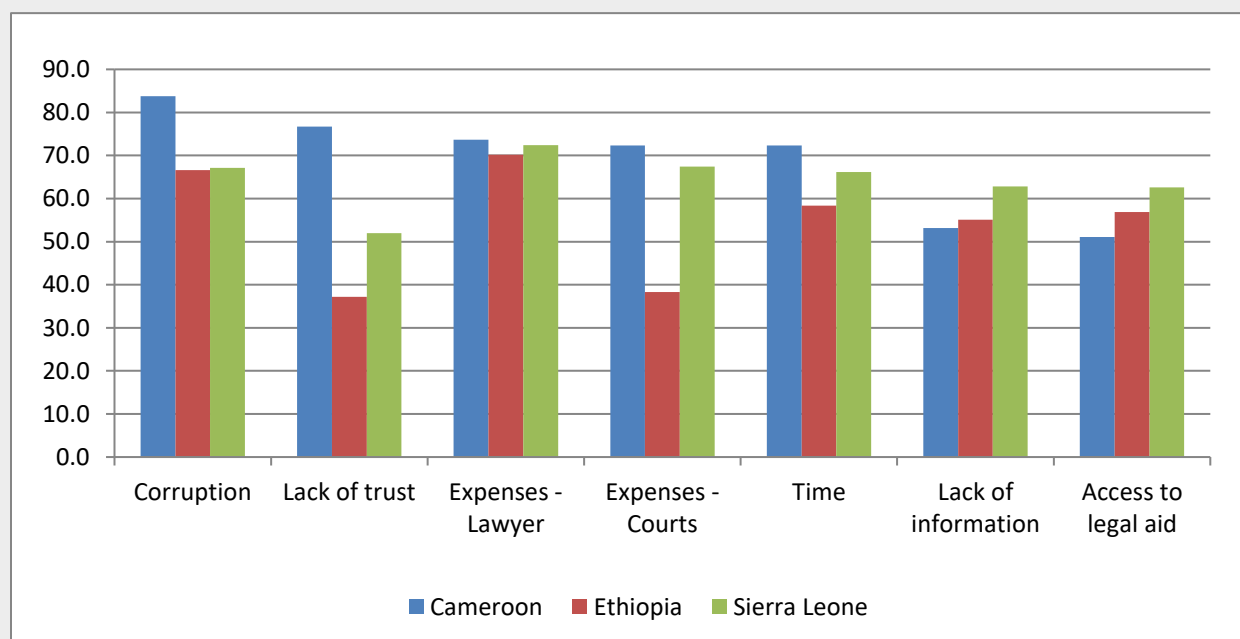
As for barriers, vulnerable households perceive these as the various barriers and the top-seven most serious barriers in accessing formal courts (table 1 and figure 4 respectively and figure 5):

Table 1 | Barriers Identified in Cameroon, Ethiopia, and Sierra Leone

Type of Barrier	Cameroon	Ethiopia	Sierra Leone
Access to legal aid	51.1	56.9	62.6
Complex procedure	47.6	36.2	46.7
Corruption	83.8	66.6	67.1
Cultural/language	43	12.3	37.4
Discrimination	62.3	25.7	39.6
Distance to courts	23	18.4	55.8
Expenses—Courts	72.3	38.8	67.4
Expenses—Lawyers	73.7	70.2	72.2
Incompetence	44.3	38.8	44.6
Lack of Information	53.2	55.1	62.8
Lack of Trust	76.7	37.2	52
Poor quality of outcome	62.9	37.3	41.7
Time	72.3	58.8	66.2

Source: NTF surveys reported in the book

Figure 4 | Top Seven Barriers to Accessing Justice in Sub-Saharan Africa



Source: NTF surveys reported in the book

Information on the role and function of the courts and other justice sector entities, their importance in social and economic development, and how to access the court system and offer feedback on performance is essential. For policymakers, enhanced national and regional data is needed through periodic research and data generation similar to household data reports on access to justice. This would better inform justice sector

policy and better capture and incorporate the views of citizens in long-term policy.

Data collection and dissemination through mobile phones could be a good way to proceed. The World Bank's "Listening to Africa" project, which interviews citizens, could also be a strong model for replication and extension on the continent to collect and disseminate demand and supply-side data gaps of the courts and ancillary institutions.

Methodology

The action research for each country involved a quantitative study with a mix of qualitative research methods. The quantitative and central aspect of the study involved surveys of perceptions and experiences of households and court users to generate statistical data, reflecting perceptions and voices of the vulnerable on various issues of access to justice. The qualitative feature of the study aims to substantiate and elaborate quantitative findings and aspects of the study not covered through quantitative methods. Methods include focus group discussions, key informant

interviews, and consultations with representatives of vulnerable groups and key stakeholder institutions.

The research involved a review of the literature and documentary analysis to gather qualitative and quantitative information from secondary sources, such as prior studies (published and unpublished), court databases and proceedings, project performance and evaluation reports, and legal and policy documents.

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Cameroon

Less than 5 percent of the population in Yaoundé, the capital, has confidence in the quality of judicial services.

Introduction

French Cameroon gained independence in 1960, followed by reunification in 1961, uniting British Southern Cameroon and French Cameroon to form a federal republic. Cameroon did not discard laws inherited from the colonial period. Indeed, successive constitutions kept the laws of colonial origin in force until expressly or implicitly repealed by local legislation.²⁴

The practical effect of this has been the preservation and interplay of rules of customary law—French-derived civil law, British-derived common law, and, mainly, state-enacted laws.²⁵ International treaties ratified by the country are also integral to the law of the land, according to article 45 of the 1996 constitution.

Yet things have continued to change in the intervening years. A continuous reform program

has aimed to create an integrated legal system and this dream has almost been realized. Single codes are now in force in various domains (criminal law and criminal procedure, labour law, and land law). A common business law is being elaborated under the aegis of Organisation for the Harmonization of Business Law in Africa, Economic and Monetary Community of Central Africa, and the *Conférence Inter-Africaine des Marchés de L'Assurance*.²⁶ Part of family law is also under a single law, with civil procedure, contract law, tort law, and part of family law still to be unified.²⁷

As reforms proceed, the distinction marking the country's judicial system will fall no more between civil law and common law, but instead between modern law and customary law.

Shortcomings

Nonetheless, the judicial system faces institutional, human, and material constraints. In the former, for example, the Supreme Court was not reorganized as called for in the 1996 constitution. Human resources, magistrates, court clerks, and qualified staff remain in short supply, working conditions are poor, and salaries low. And the lawyers, bailiffs, and solicitors that do exist are often considered dishonest or otherwise non-compliant with substantive and procedural rules. Among the material constraints, courts lack premises and appropriate storage for archive files,

registries are overcrowded, and office equipment is often obsolete, this latter factor is one reason for long delays in court decisions.

Broadly speaking, based on the results of the Nordic Trust Fund survey, numerous respondents acknowledged the reforms made to improve access to justice in the country, including to increase court staff, build new court buildings, raise salaries, ensure court staff training, and modernize equipment. Yet only 33.6 percent of households believed that access to justice had improved.

²⁴ Constitution of Cameroon, January 18, 1996.

²⁵ Including the constitution, laws passed by the legislature, decrees and ordinances by the head of state, subsidiary legislation as orders by ministers, and local subsidiary legislation as by-laws, orders, and rules made by regional governors, senior divisional officers, and local councils for their own areas of authority.

²⁶ For insurance law.

²⁷ But a single, family law code is almost ready at the Ministry of Family and Women's Empowerment.

Box 1 Key Findings

- Many respondents acknowledged efforts to improve access to justice. Despite these efforts, only 33.6 percent of households believed that it had improved: 60 percent of men and 54 percent of women felt services were difficult or very difficult to access.
- Traditional courts were considered easy to access by 40 percent of men and about 32 percent of women. And Cameroonians did not have confidence in the quality of the services provided, while 70.6 percent of court users said the system favored the rich and powerful.
- Several hurdles bar access: 55 percent primarily pinpoint the lack of information and 57 percent of the youth and 58 percent of women identify the absence or limited availability of legal aid services as major barriers; 74 percent of young people and 73.5 percent of women considered the lack of adequate information a serious barrier. Corruption (up to 86.3 percent), discrimination by judicial officials (64.9 percent), poor decisions (65.7 percent) and lack of confidence in the judiciary (78 percent) were seen as barriers.
- Awareness of national laws is low: 44.8 percent of women and 35.8 percent of men believed that their knowledge of their rights was low; 69.4 percent of women and 61.7 percent of men said their knowledge of the judiciary was low.
- The Cameroonian Judiciary suffers from lack of trust and confidence in fairness and effectiveness. As an alternative to the formal system, 24 percent of interviewees in Yaoundé systematically resort to alternate judicial mechanisms (conciliation, mediation, transaction).
- One solution could be the establishment of fast-track procedures with lower court fees and self-representation options, coupled with effective citizen legal education, legal aid, mobile services that are offered closer to the communities, and the creation of small claims courts.

Institutional Framework, Judicial Structure, and Legal Framework

Organization of the judiciary is regulated by the constitution and the law. It is comprised of courts of ordinary jurisdiction and courts with specialized jurisdiction.

The courts of ordinary jurisdiction include customary law courts, courts of first instance, high courts, courts of appeal and the Supreme Court. The last two have appellate jurisdiction and the others original jurisdiction. The 1972 Ordinance and the 2006 Law on judicial organization maintained the *customary law courts* of both West Cameroon and East Cameroon,²⁸ which operate as they always have.

In the English-speaking regions, the customary law courts include the Customary Courts and Alkali Courts. In the French-speaking regions, those

customary law courts include the Grade I Tribunals (*Tribunaux de Premier Degré*) and Customary Tribunals (*Tribunaux Coutumiers*).²⁹

The High Court tries all felonies (except embezzlements exceeding 50 million CFA francs, which are tried by the Special Criminal Tribunal). It also tries civil, commercial, or labor suits involving more than 10 million CFA francs. The High Court has jurisdiction over mandamus, prohibition, and habeas corpus, restraining excess and abuses by public officials.

The Court of Appeal is located within the main town of each of Cameroon's 10 regions.³⁰ Each Court of Appeal is comprised of a president, one or more vice-presidents, one or more judges, one registrar-in-chief. *The Supreme Court*, with its seat in

²⁸ See section 31: "the organization of traditional courts and the procedure to follow before them, with the exception of the criminal jurisdiction of customary and alkali courts shall, for the time being, be maintained."

²⁹ See Decree N° 69/DF/544 of December 19, 1969 for the judicial organization and the procedure before customary law courts in East Cameroon.

³⁰ See section 19 of the law of 2006.

Yaoundé, is the highest state court in judicial, administrative, and audit matters. The Supreme Court aims to ensure that judgments of the lower

courts are in accordance with the law, thereby seeing to the unity of case-law.

Official legal framework

According to Article 45 of the 1996 constitution, international treaties the country has ratified are integral to the law of the land, and those treaties are superior to statutory laws. Cameroon is a party to the Convention on the Elimination of Discrimination against Women 1979 (ratified in 1994), the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol of 2009), the Convention on the Rights of the Child 1989 (ratified 1993) and the Optional Protocol to the Rights of the Child on the Involvement of Children in Armed Conflicts, which are the basic laws for the legal protection of women and children, respectively.

Five of the core UN human rights treaties and the African Charter on Human and Peoples' Rights

provide the relevant treaty monitoring body to receive and issue a decision on the merits of individual complaints upon consent of the state.³¹ Cameroon has accepted the jurisdiction of those treaty monitoring bodies. Some of them have received and issued several complaints coming from Cameroonians, especially the United Nations Human Rights Committee³² and the African Commission on Human and Peoples' rights.

However, the legal protection of women and children is not confined to constitutional provisions. The issue has also been given much attention in continuous legislative reform, among the most important of these laws being the Civil Code, the Penal Code, the Labour code, Land Law, and Electoral Laws.

Alternative dispute resolution mechanisms of justice

These mechanisms consist of fact finding and mutual agreement using such methods as mediation, conciliation, and arbitration. Many of the mechanisms are used informally, although the Cameroonian legal system recognizes formalized mechanisms. *Mediation* is authorized in minor cases by traditional rulers. Indeed, in rural areas, most disputes are still resolved through this mechanism. Churches also sometimes mediate.

In urban areas, mediation is common in the Ministry of Social Affairs Services and in the Ministry of Women's Empowerment Services, where thousands of family or marital conflicts are solved each year. Some institutions, such as the National Commission on Human Rights and Freedoms, also experiment with mediation. When a citizen suffers a breach of human rights, he can

require the intervention of the commission, which first tries mediation to solve the alleged problems. *Conciliation* is a voluntary system of mediation based on negotiation between two or more parties for the amicable settlement of their dispute. Conciliation is provided per the Civil Procedure Code and the Labour Code. Article 3 of the Civil Procedure Code, in force in the French-speaking regions, makes conciliation advisable in civil and commercial matters (except in divorce).³³

Section 139 of the Labour Code of 1992 makes it compulsory before any judicial procedure, and the Supreme Court has often reiterated the compulsory nature of conciliation in labour disputes.³⁴ In labor law, conciliation is organized not before a judge, but before a civil servant, the Labour Inspector.

³¹ These treaties include the International Convention on the Elimination of All Forms of Racial Discrimination, International Covenant on Civil and Political Rights, Convention on the Elimination of Discrimination against Women, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is an international, Convention on the Rights of Persons with Disabilities.

³² The last being the Ebenezer Derek Mbongo Akwanga case (Communication No. 1813/2009 of 20 June 2008).

³³ English translation: "(1) All proceedings are exempted from the preliminary conciliation. (2) Nevertheless, in all cases, the parties may agree to appear voluntarily for conciliation before the competent judge. The plaintiff may also summon the defendant in conciliation by observing the time limits set out in articles 14 and 15. (3) The judge may, at any stage of the proceedings, attempt to conciliate the parties who may be assisted by their lawyers".

³⁴ See, C.S., arrêt N° 60, 20 févr.1968, Bull. p. 2114/. English translation: "That the labor courts cannot, without exceeding their powers, take up a dispute which has not been submitted to the conciliation attempt beforehand, even if the head of the application who has not been submitted to the conciliation of the labor inspector was attached to other heads of application, which were actually submitted to him."

Survey Results

Scope

The research conducted in the cities of Yaoundé and Douala to evaluate access to justice and promote the voices and empowerment of vulnerable groups, particularly women and young people, focused on three major activities. These included a literature review of the dynamics of judicial institutions, laws and policies on human rights in Cameroon, as well as a quantitative data collection from households, from users of legal services, and from key players of the Cameroonian judiciary system. It also included collection of qualitative data through focus group discussions with service providers of legal services (magistrates and court clerks), petitioners of legal services who are traders and some nongovernment organizations whose daily activities bring them in contact with the system of justice.

The quantitative data collection phase included questionnaires to households and users of legal services to collect statistical data on their perceptions of various themes in access justice through the household survey of 1,200 individuals. To ensure broad dispersion of this sample in Yaoundé, it was distributed in the subdivisions of the Mfoundi Department, which includes the capital

urban area, using the “reasoned choices” method at various stages.

In addition, the survey selected samples of 120 important stakeholders and 60 users in accordance with the members of the Supreme Court and the World Bank. The distribution of these samples was made based on two criteria. The first criterion accounted for the categorization of justice stakeholders, divided into the four following groups:

- Judges, prosecutors, others involved in law enforcement, and lawyers
- Judicial officers (notaries and bailiffs)
- Government institutions (particularly the National Commission of Human Rights and Freedoms, the national anti-corruption commission, *Agence Nationale de Investigation Financiere* and *Consupe*)
- Judicial police officers

The second criterion considered the type of jurisdiction available in Yaoundé, particularly the Supreme Court, the Court of Appeal, the High Court, and the Court of First Instance.

Results summary

After processing data, a final sample of 1,207 people was obtained, 51 percent women and 49 percent men. About 81 percent were French speakers and the rest were English-speaking. By focusing on the age of the interviewees, young people, under 35, accounted for almost 65 percent of the sample, with the remainder people 35 years or older. People were mostly single (45.07 percent), married and monogamous (31.65 percent), or in consensual union (11.60 percent). In education, most of the sample had a secondary school level of education (49.38 percent, or 25.77 percent for the first cycle and 23.61 percent for high school) or higher education (36.87 percent).

Forty-five percent of users interviewed found themselves in court for social issues, 30 percent for civil matters, and 16.67 percent for criminal matters. Some differences were observed between men and women, civil matters constituted 41.94 percent of cases for men (41.94 percent), and cases related to social disputes were 68.97 percent of cases for women.

Among key stakeholders, 25.86 percent were judges or prosecutors, 6.90 percent worked in government institutions (National Commission of Human Rights and Freedoms, National Anti-Corruption Commission, *Agence Nationale de Investigation Financiere*, *Consupe*), 18.86 percent for judicial officers (notaries and bailiffs), 25.86 percent for lawyers, and 22.41 percent for judicial police officers. These key players were 68.10 percent men and 31.90 percent women.

Among the men, 21.52 percent were judges and prosecutors, 8.86 percent worked in government institutions, 15.19 percent were judicial officers, 26.58 percent were lawyers, and 27.85 percent were judicial police officers.

Among women, 35.14 percent were judges and prosecutors, 2.70 percent worked in government institutions, 27.03 percent were judicial officers, 24.32 percent were lawyers, and 10.81 percent judicial police officers.

Needs related to domestic, inheritance and succession disputes— In Yaoundé, the need for justice in domestic disputes were weakly identified during the survey, only 28.25 percent of cases (that is 341 out of 1,207 cases). Overall, men appear to have been those expressing their need for justice in this area (53.67 percent), especially those aged 25 to 45. In matters of inheritance and succession, women are relatively more represented among those for whom this need for justice is sought, once more aged 25 to 45 (at 35.27 percent for women and 34.95 percent for men).

About 42.72 percent of domestic violence cases are reported by women. Women reported about . Among those involved in justice in Yaoundé, only 14.66 percent of the stakeholders said they had never been consulted on issues related to domestic disputes. Those contacted most were judges and prosecutors, at 86.66 percent, saying they had been contacted at least on a regular basis.

In light of international commitments for the protection of children from the many ills they face, particularly given global commitments, special attention is given to the abuse of children in Cameroon, mainly in Yaoundé. It appears that there is a lower percentage of trafficking of vulnerable people and child labor, since 74 (6.13 percent) and 192 (15.91 percent) were identified for both cases in the capital. However, it is important to note that this finding may also reflect the low degree to which victims of such phenomena report abuse and mistreatment.

Regarding issues related to child support or child custody, 317 people expressed the need for justice (26.26 percent of the sample), 55 of them female. In most cases, this need is expressed by singles (20.82 percent for men and 20.19 percent for women) and for monogamously married individuals (12.30 percent for men and 14.51 percent for women). As for punishment at home and in school, the household survey shows that this phenomenon is a concern for people in Yaoundé and Cameroon in general.

Needs related to sexual abuse —Vulnerability to sexual abuse is a growing concern in Cameroon and the international community as well. The household survey showed that 13.34 percent (161 cases) of those interviewed reported that they had been sexually abused. The high prevalence of sexual abuse is obviously grossly underestimated given that the majority of victims, out of shame or fear of retribution, do not come forward. Of these cases, 62.73 percent were reported expressed by women, with ages 25 to 35 the most exposed to sexual abuse (about 46 percent), followed by 35 to 45 years (27 for men, 22 for women, that is, 23.61

percent overall), and 15 to 25 years (15 for men, 23 for women, 18.56 percent overall).

The household survey focused on the most recurrent types of sexual abuse, showing that 69.15 percent related to rape. The survey revealed that 32.75 percent of the cases of sexual harassment in Yaoundé occurred in church and that, overall, those affected most by this phenomenon are people aged 25–35 (52.05 percent of cases). Sexual harassment in educational and workplace settings was reported by 28.07 percent and 18.71 percent of respondents, respectively.

Responses from key players in the justice system show that many of them have received cases related to sexual abuse and sexual harassment, while victims of sexual exploitation for commercial purposes seldom speak about it. In fact, while 45.69 percent of key players say they infrequently had to deal with sexual abuse, they are 61.20 percent (and 72.42 percent respectively) likely to emphasize that it is at best rare that cases of sexual harassment (and respectively cases of sexual exploitation) were presented to them.

Among the most important needs of justice identified in Yaoundé are those related to property rights, for which 394 cases were identified (230 for men and 164 for women). Overall, 43.91 percent of cases are reported by individuals 25 to 35 years old, 26.14 percent 35–45, and the remaining in other age brackets. Whereas 364 cases of contract-related problems were reported 350 cases made claims for damages, interest, and other receivables, 330 on issues related to social disputes, and 214 cases involved disputes over business licenses, supplies, and taxes.

Among the key players working in the justice sector, 87.07 percent said that most disputes they aimed to resolve related to contracts and 89.66 percent about social disputes.

The most vulnerable groups, women, youth, and the poor, also appear to be primary targets of corruption, abuse of power, and defamation. With 646 cases of corruption (that is 53.52 percent of the sample) reported by interviewees in Yaoundé, several unlawful arrest and detention cases (460 or 38.11 percent), abuse of power (547 cases, 45.32 percent) and defamation (540 cases, 44.74 percent) were also identified during this survey. People aged 25 to 35 years are the most concerned about these issues.

The user survey revealed that 66.67 percent of respondents experienced problems related to slander, while 61.67 percent complained of problems with corruption; 53.33 percent were

victims of abuse of power, and 33.33 percent experienced illegal arrest and detention.

More than half of those interviewed (over 60 percent of men and 54 percent of women) considered formal justice mechanisms difficult or very difficult to access. Among users of justice services, 45 percent said that access to judicial institutions is difficult, against 40 percent who felt that access is moderate and 15 percent who found it easy. The field survey of the key players of justice revealed that 4.31 percent found access to jurisdictions of ordinary law very difficult, 20.69 percent difficult, 18.97 percent moderate, 35.34 percent easy, and 20.69 percent very easy.

While 64 percent of law professionals believe that access to administrative courts is easy, 50 percent of government institutions and 50 percent of judicial officers think such access is moderate. Meanwhile, most lawyers (56.67 percent) do not think that access is very difficult or difficult. As for traditional courts, they are very easy to access for 43.96 percent of justice stakeholders interviewed, that is, for 33.33 percent of lawyers, 38.40 percent of judicial police officers, and a little over 96 percent of judges and prosecutors.

The protection and promotion of civic, political, economic, and social rights need to be improved in Cameroon and it is important to assess barriers to justice, including access costs and legal aid for all segments of the population, mainly for the most vulnerable.

A little over 55 percent of respondents agree that this information deficit is a problem, and 57 percent of young people and 58 percent of women confirm that the absence or limited availability of legal aid services constitutes a serious obstacle to justice.

The household survey shows that the complexity of the legal process is a serious barrier to more than 50 percent of respondents, where 74 percent of young people and 73.48 percent of women consider that the length of the process and time required to make a court judgment bar access justice. The prevalence of corruption (86.27 percent) and discrimination by justice officials (64.89 percent)—by inducing poor decisions (65.71 percent) and therefore a lack of confidence in the Cameroonian justice (78 percent)—are serious barriers of access to justice in Yaoundé.

The ratings of the same elements by stakeholders appears more disparate. Very few judicial police officers (7.69 percent), government institutions (12.50 percent), and judicial officers (13.64 percent) see discrimination by officials as a barrier to access to justice. In sharp contrast, judges, prosecutors, and lawyers mostly believe that

discriminatory practices by justice officials are a barrier.

Similarly, contrary to the belief of most lawyers (73.33 percent), only 46.67 percent of law professionals (judges, prosecutors), 37.50 percent of institutions, 18.18 percent of judicial officers and 7.69 percent of judicial police officers consider cultural barriers a barrier to access to justice.

While the household survey points out that the cost of services and legal proceedings is a serious barrier to access to justice in Cameroon, the user survey is a bit more specific. Clearly, many individuals—80 percent of users (87.09 percent of men and 72.41 percent of women)—said that lawyers and bailiffs are expensive. Among more than half of users, emotional costs would rank first (70 percent of respondents), followed by costs of bribes (68.33 percent), costs related to legal proceedings (60 percent), the opportunity cost of procedures (51.67 percent), and costs related to transportation (50 percent). But despite the high cost of justice services, over 50 percent of respondents plan to reuse the same judicial service.

In general, it is accepted that traditional or customary justice is a way of increasing access to justice for populations marginalized by poverty, ethnicity, residence, or other factors. The household survey shows that about 24 percent of respondents in Yaoundé using it. Among those, women accounted for 53.82 percent men for 46.18 percent, less than people age under 35 years (60 percent). Discrimination by staff and difficulties implementing the decisions of these alternate justice mechanisms constitute, for the majority in Yaoundé (55.75 percent and 53.92 percent of the population, respectively for each of the two reasons) are serious barriers to wider use.

Most respondents in Yaoundé feel that justice is not truly impartial and that it favors the rich and powerful at the expense of less fortunate individuals. In fact, 84 percent of women and 85 percent of men think that Cameroon's judiciary system favors the rich and powerful. Similarly, 76.79 percent of people aged 15 to 25, 85.82 percent aged 25 to 35, 84.91 percent aged 35 to 45, and 84.91 percent of individuals older than 45 think the justice system serves the rich. Court users also agree with this negative assessment of fairness (70.59 percent).

When questioned about equity and fairness, 28.45 percent of key players in the system agree that justice benefits the rich, with lawyers, at 70 percent, at least agreeing with this statement. Over 30 percent of judiciary police officers also believe that the judiciary system favors the wealthy.

Less than 5 percent of respondents in Yaoundé believes the justice system offers quality services. Indeed, a high percentage that says the Cameroon's justice has never offered quality services: 39.54 percent of women and 35.92 percent of men and differs as well depending on the age group and level of education. Regardless of the age group, over 67 percent of those interviewed in Yaoundé believed the judiciary system had never rendered quality services.

Access to justice also depends on the information available to individuals, not only about their rights, but also with respect to the operation of the judicial system. In this regard, the household survey revealed that of 612 women, only 106 (17.32 percent) felt sufficiently aware of their rights; 274 (44.77 percent) considered their awareness low and 232 (37.91 percent) average. For the 595 men interviewed, 35.80 percent considered their awareness low, 46.05 percent average, and 18.15 percent sufficient. Regarding knowledge of national laws, more women also confirmed they had low awareness. Women do

Country Conclusion

Several lessons emerge from the analysis. First, although many interviewees agreed that recent reforms had been made to improve accessibility to the justice system, only 33.64 percent of households reported that access to justice had improved because of these reforms. The reforms, in the respondents' views, included improved staff access to documentation, increased staffing in jurisdictions, and construction of new court buildings. Others involved legislative text reforms, improving staff remuneration, retraining court staff, and acquiring modern equipment.

About 50 percent of respondents said administrative courts were difficult to access and 70.59 percent thought that Cameroon's judiciary favored the rich and powerful at the expense of the less fortunate.

Second, barriers to access justice remained significant. Among interviewees, 55 percent primarily pinpointed the lack of information, while 57 percent of young people and 58 percent of women, two of the vulnerable groups focused on in the survey, identified the absence or limited availability of legal aid services, which significantly increased the cost of accessing justice. The length and complexity of legal proceeding, likewise, represented a serious barrier for these vulnerable groups, at 74 percent of young people and 73.48 percent of women.

Beyond the physical barriers, interviewees in Yaoundé pointed to prevalent corruption (up to 86.27 percent of respondents), discrimination by officials of justice (64.89 percent), poor decisions (65.71 percent), and lack of confidence in justice (78 percent) as the main barriers to access.

Third, awareness of national laws and information about the operation of the Cameroonian judiciary

not know their rights and do not have sufficient information about existing laws. Likewise, when asked about the operation of the judiciary system, 69.44 percent of women and 61.68 percent of men said their knowledge is low.

Up to 81.03 percent of key players in the legal system recognized that legal information is not available at the community level, with government institutions and judicial police officers much more severe on this issue (87.50 percent and 92.31 percent, respectively).

Among households, 67.56 percent of men and 73.86 percent of women believed that the availability of legal aid services was low and only 8.57 percent of men and 7.68 percent of women considered it high. At the community level, 78.65 percent of males and 81.37 percent of women believed that the availability of legal aid services at the community level was very low.

system, exacerbated by the absence of legal aid services, is a significant problem.

In fact, more than 44 percent of women and 35 percent of men said their knowledge levels of rights was low and 69.44 percent of women and 61.68 percent of men believed that their knowledge level of the operation of the judiciary system was low. This is because information is indeed limited. For 81.03 percent of key players of the judiciary system, legal information is not available at the community level. A lack of legal aid services exacerbates the problem, with similarly high levels of both women and men identifying the problem. Most interviewees said used the media as their primary source of information and 45.40 percent of them said they never used law professionals.

Fourth, it is therefore not surprising that much of the population no longer has confidence in the judiciary to administer justice fairly and independently. As an alternative to the formal system, 24 percent of interviewees in Yaoundé systematically resorted to alternate justice mechanisms (conciliation, mediation). Among these people, women represented 53.82 percent and individuals younger than 35 accounted for 60 percent.

Finally, and more all-encompassing, it is clear from this study that many barriers to access to justice persist in Cameroon. In addition, many substantive questions on certain issues such as family law, the rights of young people, the rights of elderly and disabled people as well as the rights of consumers are not always addressed. Any reforms should ensure that recourse to the courts is as inexpensive and as expeditious as possible and that the services of lawyers and notaries are accessible to all.

Ethiopia

"I feel that I am incapable of using courts without money. There is a perception at the community level that you win everything in court when you have money." Small scale businesswoman in Arada, a suburb of Addis Ababa.

Introduction

Modern Ethiopia, home to more than 80 ethnic groups, was created by highland rulers through political and economic conquest in the late nineteenth and early twentieth centuries. Emperor Menelik II (who reigned from 1889–1913) expanded his rule from the central highland regions to the south, west, and east and began modernizing the country.

A power struggle ensued after his death, with Ras Tafari Mekonnen the victor, who was crowned Emperor Haile Selassie in November 1930. He is credited for the modernization of the bureaucracy and for establishing a relatively longer period of political stability, but his reign lacked reform. The regime fell in 1974 and a group of low-ranking military officers called the *Derg* assumed power that year, beginning an era of massive human rights violations and internal conflicts.

By 1991, however, the Ethiopian Peoples' Revolutionary Democratic Front had launched an ultimately successful military assault, while Eritrean rebel forces closed in on the cities of Assab and Asmara. In May 1991, the Head of State, Colonel Mengistu Haile Mariam, fled to Zimbabwe,

and in July 1991 a national conference established the Transitional Government of Ethiopia. The conference also endorsed a Transitional Charter that worked as an interim constitution.

The new constitution of 1994 provided Ethiopia its first independent judiciary, with other constitutional provisions having the potential to significantly change the judicial system. Traditionally, the Supreme Court and various lower courts had been the responsibility of the Ministry of Law and Justice, and after Selassie's overthrow, much of the formal structure of the existing judicial structure remained intact. The new constitution stipulated that judicial authority rest in "one Supreme Court, courts of administrative and autonomous regions, and other courts established by law.

The surveyed revealed serious challenges, nonetheless, particularly expensive lawyers, prevalent corruption, and slow delivery of justice. Most survey respondents also identified absence or limited accessibility of legal aid services and a lack of legal information on rights and the operation of the justice system as serious issues.

Box 2

Key Findings

Perception of the Vulnerable on Matters of Access to Justice

- Family matters (including divorce, child support, spousal support) are most frequent and misuse of power least frequent for household respondents.
- Perceived accessibility of formal courts is moderate for the majority of the vulnerable, meaning it is neither easy nor difficult to access formal courts.
- For police and prosecution offices and social courts, the majority felt positive in the household survey. Over 50 percent agreed that easier access than regular and Sharia courts.
- The study verifies that the court system has improved as per an overwhelming majority of household respondents (79.5 percent), court users (63 percent), and stakeholders (80 percent).

Barriers of Access to Justice

The following are the most onerous: lawyer expense (70.2 percent), prevalence of corruption (66.6 percent), prolonged process and delay in the delivery of justice (58.4 percent), absence or limited accessibility of legal aid services (56.9 percent), lack of legal information on rights and the operation of the justice system (55.1 percent).

Access to Non-Formal Justice Mechanisms

- Most respondents (55.7 percent) had never used traditional and alternative justice to resolve legal issues and 9.7 percent said they resort to such mechanisms seldom.

Legal Literacy and Awareness

- Most respondents had some knowledge of their legal rights, but that they knew little about how the legal and judicial system operates.
- Most respondents get legal information from print and electronic media (including newspapers, TV and Radio) and from personal contacts such as family members, neighbors, and friends.

Access to Legal Aid

- Providers of legal aid programs, though few, include charities, NGOs, the Ministries of Justice and Women, Children and Youth Affairs, members of the bar, free legal aid centers in universities with law faculties, and others. Knowledge of these is poor or very poor for most (77 percent).

Quality and Cost of Justice

- According to vulnerable groups at the community level, judicial services are less-than-moderately affordable. Those who have a positive attitude about the delivery of affordable service total 26.1 percent.
- Costs related to accessing legal assistance services, transportation, as well as opportunity and emotional costs are considered high for the majority these respondents.
- Of the statement that "the justice system works only for the rich and the powerful" 47 percent disagree and 13 percent strongly disagree."
- Asked whether court users are likely to use courts again, only 30 percent said they are unlikely to do so, while the majority (51.3 percent) were likely to do so.

Institutional Framework, Judicial Structure, Legal Framework

As a constitutional, democratic federal republic, Ethiopia has executive, legislative, and judiciary branches of government. Governance entities

include the federal government, the 8 regional (state) governments, and 2 autonomous city administrations of Addis Ababa and Dire Dawa.

Among justice institutions, the Ministry of Justice is responsible for investigation and prosecution and the Ministry of Federal Affairs supervises the federal police and prisons. Bureaus of these institutions perform their duties at the regional level. Law enforcement institutions also include the Federal Ethics and Anti-Corruption Commission and its regional counterparts. Likewise, the judiciary functions at the federal and regional levels.

Supreme judicial authority is vested with the Federal Supreme Court, which is responsible for the establishment of the federal High and First Instance Courts. A parallel judicial structure with regional Supreme, High, and First Instance Courts operates regionally.

Additionally, a system of City Courts has been established in the capital and some regional cities; these are municipal courts with defined jurisdictions determined by federal legislation and regional laws. The Addis Ababa City Charter creates two levels of City Courts exercising civil and criminal jurisdictions in municipal matters. Similar municipal courts have been established by the Oromia National Regional State in the more densely populated urban centers within the region.

Legal framework

Ethiopia is a signatory to the Universal Declaration of Human Rights and has ratified all the major international and regional human rights instruments relevant to the protection of vulnerable groups, including those focusing on women, children, and people with disabilities, without significant reservations. Moreover, the Government of Ethiopia is making visible effort to adhere to the enforcement and reporting requirements of the conventions at the regional and international levels.

Subsidiary laws and regulations supplement the international treaties and the constitutional provisions. The Criminal Procedure Code reinforces the right to legal aid of accused people in cases where the accused is a minor or when the accused cannot defend her case because of mental or physical disability.

The Public Defender's Office is established at the federal level under the Federal Supreme Court, pursuant to the proclamation providing for the establishment of the Federal Courts. Created in 1995, the office provides legal services to criminal defendants, as the constitution mandates. Primary beneficiaries of its services include defendants of genocide, juvenile delinquents, corruption,

The religious, that is *Shari'a* Courts, are given recognition at the federal level, with first instance, high, and supreme courts. All State Councils have similarly recognized the *shari'a* courts within their respective jurisdictions.

Social Courts, meanwhile, represent a more prevalent judicial structure established as small claims courts in almost all regional states and Addis Ababa. Though jurisdictional provisions vary across the country, social courts are generally mandated to entertain civil cases costing up to a maximum of Birr 5,000 (about \$216 based on exchange rates at the time of the survey). They also have jurisdiction over petty offences.

The Regional Court hierarchy is similar to the federal, with the formation of Supreme, High, and First Instance Courts in every regional state. Jurisdictionally, regional Supreme Courts have appellate and cassation jurisdictions, high courts have both first instance and appellate jurisdictions, and first instance courts entertain cases of first instance. In addition to handling cases that fall under their jurisdiction by regional laws, regional supreme courts entertain cases delegated to them from corresponding federal courts. *Shari'a* courts are also instituted at the regional level with similar hierarchy to the federal.

treason, and other serious criminal allegations. Similar public defender's offices and services are being established in some regions.

The Federal Court's Advocates Licensing and Registration Proclamation (Proclamation No.199/2000) and the Federal Court's Advocates Code of Conduct (Regulation No. 59/99, Article 49) require advocates to provide 50 hours of free legal aid service per year for the benefit of the poor or the public interest, which could serve as the basis for pro bono services (Article 49).

Relevant norms and standards include constitutional guarantees, international human rights laws, civil and penal laws and procedures, labor laws, land use and administrative laws, and sectoral and developmental policy documents. These norms guarantee basic principles of human rights, such as equality and nondiscrimination, protection from abuse and exploitation, participation in matters affecting the rights and well-being of women, children, and the family. Laws and regulations also exist recognizing the vulnerability of women and children in such issues as family law, inheritance, property and land law, juvenile justice, and violence against women and children.

The legal framework also provides for the rights of access to justice and fair trial. Access to justice is recognized as a right in the constitution, making Ethiopia one of the few African countries to do so. The constitutional guarantees also extend to the basic components of access to justice, such as the right to be represented by legal counsel at state's expense, the right to an interpreter, *pro se* representation, waiver of court fees for indigent parties, *pro bono* legal services, and other fair trial rights.

The constitution's explicit recognition of legal pluralism, that is, traditional and religious legal systems, is also important. This extends to the recognition of alternative dispute resolution mechanisms under the Labor Law, Civil and Commercial Codes, as well as to the establishment of religious courts, that is, shari'a courts, from the federal to local levels.

Survey Results

Box 3

Voices of the Vulnerable

"I ruled out going to court when my husband left me and his two children for another lady. I had no one to help me in the litigation process. I had nowhere to go if my husband forced me to leave the house. I had no one to protect me from threats and violence that may follow from the case. Thus, I said I better work hard to survive and feed my children." A woman named Lideta.

"Most of us fear going to courts. There seems to be a general perception that going to courts is a waste of time and fruitless. We thus prefer settling disputes through mediation, arbitration or other means including at the cost of unofficial payments and undue loss of revenues. Rumors about those who have withdrawn cases because of prolonged process strengthen such perception." A female trader and exporter.

"To me going to courts is not for everyone to exercise. What comes to my mind when I think of courts is fear of punishment. What if I get arrested because of what I say or do in courts and what if that led to my imprisonment and hence parting from my husband and children. I better stay far from courts."

"Access to courts is not easy for a poor woman. It involves cost of transportation and preparation of pleadings. It requires knowledge, money, confidence to speak out, and to challenge cultural norms. The time it takes and fear of losing cases are also frightening for women." Kirkos woman.

"Most women victimized by domestic violence tend to be quiet about it and it is seldom that they use available justice mechanisms for fear that they may not get a solution in a timely manner and for lack of any protection from further violence". Gulele woman.

"What obstructs me and many other women not to go to courts is lack of knowledge about rights and enforcement mechanisms. Legal information is crucial to abide by the law and avoid going to courts." Female trader in the export business.

"Many people think that they cannot even whisper and move around in court compounds. Ignorance about the law, justice institutions and how to access them is predominant among poorer communities." Kirkos woman.

"The problem with using alternative justice mechanisms includes dominance of men and men's interests over that of women, weak execution of their judgments and its exposure to misuse and corruption." Participant from Kirkos.

Scope

Three groups of respondents were targeted and accessed as primary sources of information:

- Women and youth at the community level who participated in the household survey and in focus groups. Focus group discussion participants included leaders of women's business associations, leaders of women's and youth associations and other community-based associations, women, children and youth affairs officials, among others.
- Court (direct) users drawn from women using Federal First Instance Courts, Addis Ababa City Administration courts, and Federal Sharia courts.
- Key stakeholders drawn from all federal and city courts in Addis Ababa, women's affairs officials at the district and sub-city level, and from other justice sector organizations, including the office of the Ombudsman, Ethiopian Human Rights Commission, the police, and Ministry of Justice (prosecutors).

The Household Survey utilized a structured questionnaire to assess the perception, practice, and perspectives of vulnerable groups in Addis Ababa regarding most of the research issues mentioned above. Respondents were selected

using a combination of stratified, random, and purposive sampling techniques to ensure representation of vulnerable groups in Addis Ababa, especially women and youth.

The survey covered 1,289 respondents (women and youth) living in randomly selected households from six *woredas*³⁵ in six subcities, informal traders (30), housemaids (42) from the neighborhoods of these households, as well as female victims of violence (30), and children in conflict with the law (2) drawn from shelters and the Center for Reformation and Rehabilitation of Children in Conflict with the Law in Addis Ababa.

Respondents comprised 70.36 percent women and 29.64 percent men, with most respondents aged 10–29, or 67 percent of all respondents. The majority had secondary education (41.3 percent), with a college diploma (25.8 percent) and above, and primary education (17.8 percent), the remainder illiterate and with low education levels.

Stakeholder interviews were answered by 66 professionals representing judges, prosecutors, private attorneys/advocates and legal aid, responding to a structured questionnaire to gather perspective of key stakeholders on some of the key access to justice issues.

Results summary

The justice needs among the vulnerable groups in Ethiopia in order of frequency are:

- family law issues including divorce, domestic disputes, inheritance, child support and custody (36.4 percent);
- property and business matters, including entitlements to urban land use and housing, issues of licensing and taxation (32.4 percent);
- gender-based and sexual violence against women and children, including sexual abuse (rape), sexual harassment, bullying, and domestic violence (24.1 percent);
- contracts, tort, and other monetary claims (21.3 percent);
- labor issues including child labor (12.8 percent);
- physical violence and punishment against children and youth at home, in the community, and in schools (12.4 percent);

- misuse or abuse of power by police and justice sector officials including unlawful arrest and detention (11.3 percent).

The household survey findings disaggregated by gender, age, residence, and education are also interesting. For instance, the most recurrent criminal issues identified by women are bullying, sexual harassment, and domestic violence. For youth aged 18–29 in low-income communities, such as Kirkos and Gulele, unlawful arrest and detention are important.

Children reported the highest incidence of sexual abuse, sexual harassment, and corporal punishment among age groups. The frequency of these offenses is also more than two-fold greater for youth and children than the elderly and the middle-aged, reaffirming the vulnerability of youth below 29 in matters of sexual and physical violence. These offences (physical and sexual violence at home and in the community) affecting

³⁵ Lowest administrative units in Addis Ababa below sub-cities and the city administration.

women, children, and youth are more recurrent in low-income communities and disproportionately affect illiterate respondents and those with elementary education.

Focus group participants agreed that property rights, with an emphasis on housing and land-related disputes, are common justice needs for women and youth in communities. Property rights aside, the most common and critical justice needs included family law issues, gender-based violence, and child abuse and neglect.

Participants also mentioned justice needs that might not be covered by the household survey, such as contractual issues related to delivery of goods, quality of supply, and financial settlement, among them issuing bad checks and settlement of credits; theft and fraud by suppliers, customers, and workers; and administrative justice issues related to taxation and licensing.

The survey clearly establishes positive perception at the community level about accessibility of law enforcement agencies (the police and prosecution office) and social courts. More than 50 percent of respondents agreed accessibility of these institutions was relatively easier compared to regular and Sharia courts.

The responses of court users mirror the findings of the household survey but with little variation. The highest proportion of court users (30.3 percent) agreed with household respondents when they give accessibility of formal courts a medium rating. Nonetheless, most of the court user respondents (46.6 percent) assessed it negatively and assessed the accessibility of formal courts as difficult or very difficult. Conversely, 22.8 percent of court users had favorable opinions. The majority of focus group women (particularly business women) and youth participants say they had never accessed courts, while those who had hinted that they did so for a lack of other options.

Some 1,062 women and youth (79.5 percent) of respondents simply or strongly agreed, with only 101 (7.8 percent) respondents disagreeing. The rest were neutral.

The perception of household participants was shared by surveyed stakeholders, with 80 percent agreeing with the statement and only 9.2 percent disagreeing or strongly disagreeing. The perception of court users is perhaps the most relevant in verifying measures taken to improve the accessibility of court and justice institutions:

63 percent of surveyed court users acknowledged improvements in the past few years.

Barriers to accessing formal justice mechanisms—One major inquiry of the household survey was to determine the seriousness of barriers to access to justice by gauging the perception of vulnerable groups on a list of barriers. All 12 barriers are once again confirmed by women and youth in Addis Ababa, to varying degrees.

Five barriers stand out as the most serious by more than 50 percent of the respondents, while the top two in the list are labeled serious by more than two-thirds. These include the following, in order:

- High cost of hiring the service of a lawyer (70.2 percent).
- Prevalence of corruption (66.6 percent).
- Prolonged process and delay in delivery of justice (58.4 percent).
- Absence or limited accessibility of legal aid services (56.9 percent).
- Lack of legal information on rights and the operation of the justice system (55.1 percent).

Four barriers were considered serious by more than one-third of respondents, but less than the majority. These are determined as moderate barriers, considering that they constitute responses ranging from 36.2 percent to 38.8 percent. These include the following:

- Incompetence of court and law enforcement officials (38.8 percent).
- High cost related to reporting and filing a case (court fee, secretarial and transportation expenses) (38.3 percent).
- Poor quality of outcome and process (37.3 percent).
- Complex, unfriendly and intimidating procedures (36.2 percent).

Non-serious barriers, meanwhile, refer to cultural and linguistic barriers, and gender bias and discrimination by justice sector officials. The frequency distribution of the respondents who rated these items as serious barriers was also lower: 12.3 percent for cultural and linguistic barriers, and 25.7 percent to gender bias and discrimination by justice sector officials³⁶.

Trends in the use of courts by the vulnerable—In the judicial database system provides space for registering gender, but the judicial practice does not involve disaggregation of parties to a dispute by gender and age, making it difficult to assess the

³⁶ Since survey sample was urban (City of Addis Ababa), as the courts are geographically well distributed, “distance to courts” was not considered a serious barrier by the respondents. In a rural or peri-urban setting in Ethiopia this factor may be serious barrier to access to justice.

extent women, youth, and children are using the formal court system. What is commonly done to disaggregate data by gender is a review of common feminine names, as in the case of the World Bank study on users and uses of federal courts. This study establishes from the analysis of civil cases entering the Federal First Instance Court that women constitute a majority (probably because they are frequent plaintiffs in family cases) and are slightly more likely to appear as plaintiffs than men. Their representation declines, however, in the Federal High Court and Federal Supreme Court, largely because original jurisdiction cases are a minority in the Federal High Court and nonexistent in the Federal Supreme Court. This may also indicate that they usually won their cases in the first instance (thus did not appeal). It also means that first (for the High Court alone), they are less likely to initiate cases of higher monetary value, and second (for both the High and Supreme Court) they apparently are less likely to enter appeals or cassation.

By contrast, women were significantly less frequent users in labor cases. As defendants, women are underrepresented at all levels, although in the Federal Supreme Court and Federal High Court, somewhat less than as plaintiffs or appellants. Children are users of courts in family disputes, including custody and child support, inheritance, and adoption. They also come to courts as victims and witnesses to sexual violence and as suspects of crime seeking child justice.

The household survey asked how much respondents or family members made use of alternative and traditional justice mechanisms to settle disputes and redress grievances. Most respondents (55.7 percent) had never done, 9.7 percent did so seldom, 25 percent did so infrequently, 8.4 percent usually, and 1.3 percent frequently. The household survey also established, among respondents, 59.2 percent of men and 68 percent women in Addis Ababa were not frequent users of informal justice mechanisms. Neighborhoods largely inhabited by homogenous ethnic groups with traditional community ties tended to use traditional justice mechanisms more than others.

Barriers to accessing non-formal justice mechanisms—Respondents to the household survey were also asked to rate the seriousness of barriers to using alternative justice mechanisms—barriers affecting their use of traditional and alternative justice mechanisms—as most, moderate, and least serious. The survey affirmed that the weak execution of decisions holds the top spot in the seriousness list, followed by prolonged process and delay in the delivery of justice, gender bias and discrimination by personnel, limited

capacity of personnel, and unpredictability of outcome.

Awareness about legal rights—Analysis of the household survey suggests that the majority of respondents had some knowledge about their legal rights. The most frequent response was medium awareness, at 59 percent. A significant proportion (24 percent) said their awareness was high and the rest (17 percent) said they had little or no awareness at all.

Legal system awareness—Even though most respondents had medium knowledge of their legal rights, overall awareness of legal system operation was relatively poor. More specifically, 42.2 percent of respondents rated their knowledge on the operation of the legal system as medium, while responses testifying to poor and very poor knowledge gets higher (49.5 percent). Hence, the respondents' knowledge of the legal system is lower than knowledge of legal rights.

Availability of legal information—Availability of legal information at the community level is extremely limited according to 68 percent of respondents. Those who rated their responses medium were also small, 24.4 percent, while the sum of high and very high yields were 7.6 percent. There is no significant variation by disaggregation.

Household respondents were asked to point out which sources of information they relied on to get legal information. They get legal information mostly from personal contacts, such as family members, neighbors, and friends and print and electronic media (including newspapers, TV, and radio). The latter is the most popular source of legal information, with 46.7 percent using it more frequently and 33 percent moderately. Personal contacts come next, with 39.3 percent using it moderately and 22 percent frequently as a source of legal information. Materials like posters, leaflets and billboards, awareness raising workshops and programs, community outreach and community conversation programs, and professional lawyers were the least popular sources of information. While 89.1 percent never or seldom used community outreach programs, of those who did 87.1 percent attended awareness raising workshops, 71.9 percent used professional lawyers, and 68.2 percent posters, leaflets, and so on.

Access to legal aid services—The household survey examined awareness and knowledge of free legal aid service programs and their perceptions accessibility of legal aid services at the community level. Knowledge of free legal aid service programs at the community level was "very poor", at 46.5 percent, and 30.5 percent "poor" or 77 percent of the total negative. The rest were moderate (17.3

percent) and high and very high (5.7 percent). The majority of respondents did not consider free legal aid services accessible.

Stakeholder perception of the availability of legal aid services at the community level was similar. Two in three stakeholders (66.2 percent) considered legal aid “slightly available” at the community level, while only 20 percent thought it “moderately available”. For 12.3 percent of stakeholders, legal aid services were not available at all at the community level.

Responses also reveal that court users had not received legal aid services (62.5 percent) when seeking remedies from the justice institutions and courts, with 37.5 percent saying they did. Among these latter, 84.7 percent received oral advice and 78.2 percent legal assistance in the preparation of pleadings. However, the proportion of users who were represented in court proceedings was only 35.7 percent of those who received any form of legal aid. This constitutes only 13.8 percent of all respondents included in the court user survey.

Quality of judicial processes and delivered services—The perception of vulnerable groups on the delivery of quality justice services seems to be positive or moderate, according to the findings of the household survey. Accordingly, 38.9 percent of respondents opted for the middle ground, while 33.3 percent held a negative perception of the delivery of quality services. The remaining 28 percent thought quality service was delivered by the Ethiopian justice system often. Stakeholders had a more negative perception than ordinary people. The total proportion of stakeholders who responded negatively to the quality of judicial services was 42.4 percent, compared with 21.2 percent positive.

On whether the justice system delivers timely service, the majority of respondents in the household survey opted for the middle option, 36.6 percent saying that the justice system sometimes delivers timely service. Yet, an equivalent proportion (36.3 percent) believed that it did so seldom or never. The proportion of those with a positive outlook was about 27 percent. Court users viewed this negatively, with 50.7 percent almost equally divided between negative ratings of “never” and “seldom”. A substantial, but relatively small 31.9 percent of respondents had a positive point of view. A smaller proportion (17.4 percent) chose the neutral option and assessed the process as “sometimes” timely and efficient. Stakeholders’ assessment of timeliness and efficiency in the justice process is also negative, with 44.6 percent saying “seldom” or “never”.

Costs of judicial services—The household survey assessed the perception of vulnerable groups on affordability of judicial services. The most frequent response was the middle option, at 37.5 percent. Slightly fewer respondents (35.4 percent) had the opinion that affordable service were seldom or never delivered. The perception of stakeholders on the affordability of judicial services is relatively positive for 42.4 percent of stakeholder respondents.

Fairness of justice system—The household survey probed attitudes of vulnerable groups (women and youth) on the fairness of Ethiopian justice. More specifically, the survey asked to what extent respondents agreed or disagreed that: “The justice system works only for the rich and the powerful”.

The majority of the respondents disagreed—47.6 percent of the respondents disagreed with the statement, and 13 percent strongly disagreed. With a count of respondents reaching 781 women and young men, this figure expresses the public perception inclined toward trust and fairness in the justice system. Stakeholders’ perception of fairness in the justice system was similarly assessed and the majority (69.7 percent) of respondents disagreed with the statement with more than 22.7 percent expressing strong disagreement. Less than a fifth of all respondents in the stakeholder survey (18.2 percent) agreed with the adverse statement and only 1.5 percent among them strongly agreed. More than a tenth (12.1 percent) of all respondents to the survey was undecided on the issue. The user survey results indicate that a large proportion of court users (69.7 percent) disagreed or strongly disagreed with the statement, while less than one in five (18.9 percent) expressed agreement. The proportion of respondents who were undecided was also relatively small (11.3 percent).

Fairness of the judicial process is also assessed, focused on objectivity and bias. Consistent with the above, 52.7 percent of respondents gave a positive assessment of the process. On the other side of the scale, 24.4 percent responded that the justice process was never or seldom objective and unbiased. The remaining 22.9 percent of users chose the middle ground and responded that the process is sometimes objective and unbiased. The outlook of most court users on this issue is predominantly negative, with only 28.3 percent of respondents choosing positive ratings. A much larger proportion of court users (59.7 percent) found the justice process lacking objectivity. Moreover, the highest proportion of responses (39.8 percent) fell on the worst available option, “never,” which left only marginal numbers of respondents supporting the neutral response.

Country Conclusion

The 2012 study has reaffirmed that the Ethiopian legal and policy framework is generally conducive to protecting the rights of the vulnerable and assuring their right of access to justice. The legal spectrum extends from constitutional provisions and ratification of international human rights instruments down to substantive, procedural, and subsidiary laws.

The overall perception on accessibility of justice in the country is positive, albeit with variations specific to each of the justice sector institutions, in that the closer the justice institution is to the community, the more positive the perception.

One major intervention that improved access to justice is the establishment of courts and benches in different parts of the city. However, in most cases, court facilities and structures were not up to par. Most courts are in buildings not custom-built as courthouses. Some are even in rented premises with severe space constraints and an acute shortage of trial chambers. Almost all of them lack access facilities—such as ramps—for the disabled and seats for court users. The courts are not all strategically located, as has been pointed out by businesswomen in Addis Merkato, who would have liked to see a court close by. Victims of domestic violence and the witnesses also perceived courts to be distant.

A further challenge is the perennial shortage of judges and other judicial personnel at all levels. Turnover of judicial staff and personnel is rampant, particularly in information technology. Obviously, this harms the efficiency and effectiveness of the courts, hampering access to justice of vulnerable groups. At this juncture, one might also mention the finding that

there is virtually no organized system of collecting and disseminating justice information.

Awareness of the vulnerable concerning their rights and the operation of the legal system are not encouraging—most had minimal awareness of either. That courts and other justice institutions lack an information network to sensitize vulnerable groups about their rights worsens the problem. The lack of awareness campaigns even about reform measures and available resources for legal empowerment contributes to negative perceptions about accessibility.

The study reaffirms that the vulnerable lack both the awareness and the capacity to take all legal claims to courts and alternative channels. It further suggests that personal, economic, and social security issues at home and in communities (such as inheritance, divorce, child custody, childcare, division of common property, and domestic violence) are burning issues for the vulnerable. A critical factor in this regard is the low social and economic status of women, which acts as psychological and material barrier. The two factors feed on one another, in that they not only expose women to the infringement of their rights, but they also hinder them from accessing the justice system to find redress.

Women at the community level also claim that gender bias against women by the justice sector officials remains high, particularly in the case of police. This perception holds despite the acknowledged fact that there is progress in establishing gender sensitive and child-friendly judicial and law enforcement mechanisms (institutions and procedures).

Recommendations

Build physically accessible courts (higher, first instance and municipal)—Increase physical accessibility ensuring quality international standard; use mobile courts with comprehensive judicial services including mediation.

Expand the role of traditional and alternative dispute resolution mechanisms—Strengthening community level dispute mechanisms; strengthen establishment of alternative dispute resolution divisions within the formal court system.

Improve access to legal and judicial information at the community and court levels—This includes court-initiated media actions; legal literacy and information campaign through strategic partnerships with states, municipalities, businesses, and other stakeholders;

court-based legal information services; identify and address intimidating and unfriendly procedures through legal information and education campaigns.

Improving accessibility of legal aid services by the vulnerable—Promote institutionalization of a comprehensive state funded legal aid system; launch paralegal training programs; strengthen legal aid services provided in the criminal justice system.

Addressing capacity limitations affecting accessibility and quality of justice—Take measures for efficient recruitment and retention of judicial personnel; organize special training programs, experience sharing and consultation forums; overhaul and upgrading information and communication technologies.

Sierra Leone

In Sierra Leone, 71.4 percent believe the justice system works only for the rich and powerful.

Introduction

Justice in Sierra Leone is elusive, a reflection of an egregious civil war ending in 2002 that, in addition to other tragedies, devastated the formal justice system. The war destroyed the physical infrastructure of the system, undermined the rule of law and credibility of its institutions, and left the system largely at the service only of the urban elite.

Corruption and mismanagement in the political arena in the intervening years politicized the judiciary, law, and prison services and these institutions do not function effectively, are slow to respond to change, and are potentially uninterested in new developments that appear to challenge the status quo.

Most of the population now lives in poverty, literacy is low, and public understanding of the laws or how to access justice is weak. About 70 percent of people instead access the informal, customary courts or seek adjudication by traditional authorities such as tribal chiefs and religious leaders. This reliance on informal judicial mechanisms likely reflects a lack of confidence in the formalized legal apparatus, where discriminatory practices exist, as in informal systems, but where greater barriers to entry, such as the cost of legal representation, discourage use.

This is borne out by the Nordic Trust Fund survey results. Overall respondents found access to courts and law enforcement agencies difficult, with formal

courts and law enforcement agencies more difficult to access than local courts. Yet respondents also pointed to multiple barriers to alternative informal justice, and raised similar issues as they did for the formal justice system. Most serious were lengthy processes and delays in the delivery of justice.

Over half of the respondents said justice worked only for the rich and powerful, while slightly over half were neutral or observed no improvement in the accessibility of the court system in recent years. Overall, respondents said they lacked awareness and knowledge of all aspects of legal information and legal aid.

The main issue in Sierra Leone is, not surprisingly, the lack of information about the legal system and weak public-sector institutions. In rural and urban communities, more than half of respondents felt that their level of information was at least poor. This ignorance about rights and court processes compounds the difficulty vulnerable groups have accessing justice. Over 80 percent of respondents had never received legal information from a lawyer or through awareness-raising workshops and programs.

Clearly, empowering the vulnerable segments of the population, especially women, requires legal literacy campaigns, the set-up of legal information services, and a simplification of overly complicated procedures in formal courts.

Box 4 Key Findings

- Costs are a major barrier in accessing justice for vulnerable groups. Vulnerable groups identify and incur different types of payments and fees in order to report, institute, and maintain a case before the formal justice institutions (including the courts and police). They consider those costs excessive, thus discouraging ordinary, disadvantaged citizens from accessing justice. These factors also add to costs:
 - The distance to get to formal justice institutions is significant.
 - Private lawyers are expensive and unaffordable for vulnerable groups, and there are very few opportunities for pro bono services.
- Lack of trust and confidence in the judicial system is also a major hurdle to access justice for vulnerable groups. Within this factor the report found that:
 - Vulnerable groups stated that formal justice institutions (courts, police) favored the wealthy and powerful. A case would more likely favor a party with greater financial and social status than a vulnerable party, irrespective of case merits.
 - Prolonged processes and delay in court proceedings constitutes a major barrier for vulnerable groups and discourages them from bringing their case to court.
 - Court procedures are complex, unfriendly, and intimidating.
 - Vulnerable groups perceived court and police officials to be corrupt. Respondents perceived that without bribes, case outcomes would likely be unfavorable.
- Demand for litigation still exceeds availability of legal aid. Court proceedings are predominantly conducted in English, but because a low percentage of people complete secondary and higher education, few could understand court proceedings.
- Intra-community breaches of rights—divorce and domestic disputes, domestic and gender-based violence, contracts and monetary damage, physical violence—dominated legal issues and grievances in households and courts.
- Outreach programs, especially through the media, could be a great resource for information on formal justice processes.
- Dissatisfaction was lower with the services of judges and magistrates than with prosecutors or the police.

Institutional Framework and Judicial Structure

Section 73 of the Constitution of Sierra Leone establishes a unicameral legislature composed of a president, the speaker, and members of parliament. Legislative power is vested in parliament and the constitution provides that parliament has supreme law creating powers and can confer on individuals or authorities the power to create statutory instruments of subsidiary legislation. Legislative power is exercised by bills

created and passed in parliament and then signed by the president. Laws unsigned by the president, after 14 days, can still become law should a two-thirds majority of members agree.

Sierra Leone operates under a dual legal system comprised of a formal system with aspects of common law, statute law, and customary law. Common law sometimes includes the rules of

customary law, as determined by the Supreme Court, which causes confusion.

The judiciary is comprised of the Superior Courts of Judicature, the Supreme Court, the Court of Appeals, the High Court, and the lesser Magistrates Court (which has jurisdiction in certain criminal and civil matters and preliminary investigations of felonies).

The customary system includes a local court for every chiefdom. With every chiefdom come potentially different customary bylaws, as they are determined by local practice and tradition.³⁷ Most people likely use the local courts, compelled by proximity, logistical and linguistic advantage, familiar basis in local cultural norms, emphasis on mediation (which is favored among people unfamiliar with their rights), fast, and perceived as less costly. Such factors are attractive to a population that is often uneducated and illiterate and lacks awareness and understanding of other forms of conflict resolution.

But such a system has several problems, such as discrimination against women in matters of personal status, inheritance, and marriage because of some combination of local “tradition” and arbitrary outcomes.³⁸ Jurisdictional disagreement is another, with boundaries not clearly known, understood, or accepted in rural communities.

Legal Framework

Sierra Leone is bound by Article 10(d) of its constitution to respect international law and treaty obligations. The following International Conventions have been ratified:

- International Convention on Economic, Social, and Cultural Rights
- International Convention on Civil and Political Rights
- International Convention on the Elimination of All Forms of Discrimination against Women
- International Convention on the Rights of Children
- Protocol on the Involvement of Children in Armed Conflict
- Protocol on the Sale of Children, Child Prostitution, and Child Pornography

The *Minister of Justice* plays a dual role in the justice system. The minister oversees the judiciary and other criminal justice institutions and is the principal legal advisor to the government in the capacity as attorney general.

The Law Officers Department is part of the Ministry of Justice and the Attorney General’s Office and is responsible for all public prosecutions. Private prosecutions can be pursued at the magistrate court, as well as at the High Court given a fiat from the attorney general. At the magistrate level, police officers with basic legal training may conduct prosecutions.

Sierra Leone police provide law enforcement, with presence at central, district, and sub-district levels. The force is headed by an Inspector General of Police appointed the president of the country.

The Anti-Corruption Commission, set up in 2000, has powers to investigate and prosecute corruption-related offences. Since 2008, it has unfettered power to commence prosecutions in the High Court.

The Human Rights body was created by the Lome Peace Accord of 1999 and formalized as the Human Rights Commission in 2004 an act that year mandating protection and promotion of human rights. In 2006, the Truth and Reconciliation Commission became operational and began reporting on the state of human rights annually.

- African Charter on Human and People’s Rights
- African Charter on the Rights and Welfare of the Child

The Constitution also broadly addresses access to justice in Section 8 (2) (a) where every citizen shall have equality of rights, obligations, and opportunities before the law. Further, the government shall secure and maintain the independence, impartiality, and integrity of the courts of law and ensure unfettered access and non-discrimination because of economic difficulty or other disability.

Yet there are two significant caveats in the constitution:

³⁷ Local Courts Act of 2011: customary law means “any rule other than a rule of general law, having the force of law in any Chiefdom of the provinces whereby rights and correlative duties are acquired and imposed in conformity with natural justice and equity and not incompatible either directly or indirectly with and enactment applying to the provinces and includes any amendment of customary law made in accordance with the provisions of any enactment”

³⁸ Amnesty International: 2006 – Sierra Leone women face human rights abuses in the informal justice sector.

- Relevant clauses with regards to non-discrimination and access to justice exist in sections related to fundamental principles of state policy. However, they do not confer legal rights, nor are they enforceable in any court of law. Paradoxically, these provisos are fundamental to governance, in that they are written as law, yet may not provide any actual protections.
- Chapter 3 recognizes the protection of human rights and fundamental freedoms, yet contains a root flaw: Section 27 (1) provides that such laws shall not apply to or make provisions related to adoption, marriage, divorce, burial, devolution of property upon death, or other interests of personal law.

Survey Results

Scope

This survey was limited to the views on access to justice issues of members of households and users of the Magistrates Courts close to those communities within the Western Area of Sierra Leone. It has plans for expanding to a nationwide survey.

Two generic questionnaires were developed based on similar questionnaires administered in Ethiopia and administered to sample households and magistrate court users. The areas of the household survey included were within the Western Area of Sierra, including Freetown (Adonkia) in the far

west, Freetown (Cline Town) in the east, in central Freetown (Dwarzak), and two rural mountain villages in Western Area Rural, Songo and York)

The communities were chosen based on their geographical location as densely populated communities and within easy reach of a magistrate court.

The survey was conducted in May/June 2014, as several call backs had to be undertaken to ensure complete coverage. In total, 597 household and 100 user questionnaires were completed.

Results summary

The main legal issues and grievances arising as justice needs for respondents or their households were:

Divorce and domestic dispute (55.8 percent) and domestic violence (54.5 percent); contract (33.5 percent); Physical violence at the community level (32.7 percent); Abuse of power, including corruption (32.7 percent)

Overall respondents found access to courts and law enforcement agencies difficult, with the formal courts and the law enforcement agencies more difficult than local (traditional) courts.

Of respondents, 33.1 percent considered access to formal courts very difficult, 27.0 percent difficult, 6.2 percent moderate, 9.1 percent easy, 1.7 percent very easy, and 23.0 percent did not know. For local courts, 19.1 percent considered access very difficult, 14.4 percent difficult, 13.3 percent moderate, 24.3 percent easy, 5.4 percent very easy, and 23.5 percent did not know.

Among law enforcement agencies such as the police, and public prosecution, 29.4 percent considered access very difficult, 25.3 percent difficult, 12.2 percent moderate, 18.3 percent

easy, 4.0 percent very easy, and 10.7 percent did not know.

Among court users, 38.8 percent considered access to be very difficult, 36.7 percent difficult, 17.3 percent moderate, and 7.1 percent easy.

The 10 most serious barriers of access to formal justice institutions were high costs of hiring a lawyer (72.4 percent), high costs of reporting or filing a case (67.4 percent), prevalence of corruption (67.1 percent), delays in legal processes (66.2 percent), lack of legal information on rights (62.8 percent), limited availability of legal aid (62.6 percent), distance to courts (55.8 percent), lack of trust in judiciary (52 percent), unfriendly procedures (46.7 percent), and incompetence of courts and judicial professionals (44.6 percent).

Cultural and linguistic barriers and gender bias and discrimination by justice sector officials (including double victimization) were considered the least serious barriers.

Legal costs—As reported by court users, costs related to filing or court fees were considered very high by 41.5 percent of respondents, high by 20.7

percent, medium by 20.7 percent, low by 8.5 percent, and very low by 8.6 percent.

Transportation expenses were considered very high by 43.3 percent of respondents, high by 26.8 percent, medium by 14.4 percent, low by 8.2 percent, and very low by 7.2 percent. Costs related to getting legal services (for preparation of pleadings and so on) were considered very high by 48.3 percent of respondents, high by 21.3 percent, medium by 12.4 percent, low by 6.7 percent, and very low by 11.2 percent.

Costs related to evidence collection and communication costs (including witness compensation) were considered very high by 37.6 percent of respondents, high by 30.6 percent, medium by 11.8 percent, low by 8.2 percent, and very low by 11.8 percent.

Asked how often they or their households resorted to alternative and traditional justice mechanisms, 32.8 percent of respondents never did, 22.4 percent seldom used them, 33.1 percent sometimes used them, and 4.7 percent usually used alternative and traditional justice mechanisms. Respondents who always used them reached 7.1 percent.

Limited capacity of personnel was considered a serious barrier by 35.3 percent of respondents, somehow a barrier by 19.2 percent, and not a barrier by 45.5 percent.

Gender bias and discrimination by personnel was considered a serious barrier by 34.4 percent of respondents, somehow a barrier by 23.1 percent, and not a barrier by 42.5 percent.

Unpredictable outcome was considered a serious barrier by 31.9 percent of respondents, somehow a barrier by 33.7 percent, and not a barrier at all by 34.4 percent.

Weak execution of decisions was considered a serious barrier by 34.7 percent of respondents, somehow a barrier by 37.6 percent, and not a barrier by 27.7 percent.

Prolonged process and delay in the delivery of justice was considered a serious barrier by 54.0 percent of respondents, somehow a barrier by 22.4 percent of respondents, and not a barrier at all by 23.6 percent of respondents.

Respondents here therefore indicated that multiple barriers exist in their use of alternative, non-formal justice mechanisms, and raising similar issues as for the formal justice system. The most serious barrier was the prolonged process and delay in the delivery of justice, followed by partiality of personnel.

The justice system works only for the rich and the powerful was a statement to which 5.4 percent of respondents strongly disagreed, 13.1 percent disagreed, 10.1 percent neither agreed nor disagreed, 13.8 percent agreed, and 57.6 percent strongly agreed.

Respondents who believed the Sierra Leone formal justice system never delivers affordable service constituted 67.5 percent of respondents, while 15.1 percent believed it seldom does, 12.0 percent sometimes; 2.5 percent usually 2.9 percent always.

Respondents who believed the Sierra Leone formal justice system never delivers timely service constituted 64.6 percent of respondents, 17.4 percent seldom, 12.5 percent sometimes, 3.6 percent usually, and 1.9 percent always.

Level of awareness and knowledge of legal information and legal aid—Respondents who believed their level of awareness and knowledge of their legal rights was very poor constituted 21.3 percent of respondents, 16.8 percent poor, 29.9 percent medium, 25.2 percent high, and 6.7 percent very high.

Respondents who believed their level of awareness and knowledge of the laws of the land was very poor constituted 26.1 percent of respondents, 24.9 percent said poor, 34.6 percent medium, 11.9 percent high, and 2.5 percent very high.

Those calling their level of awareness and knowledge of the workings of the legal system very poor constituted 31.1 percent of respondents: 37.8 percent said poor, 19.7 percent medium, 9.2 percent high, and 2.2 percent very high.

For level of awareness and knowledge of available legal aid services, very poor constituted 35.6 percent, while 39.8 percent said poor, 13.3 percent medium, 7.6 percent high, and 3.7 percent very high.

Those calling the rate of availability of free legal aid service in their communities “very high” constituted 1.9 percent of respondents, 2.7 percent said high, 24.7 percent medium, 35.0 percent poor, and 35.7 percent very high. Over 70 percent of respondents felt that the availability of legal aid service was at least very poor, which is in line with comments from the previous question.

Court users who received legal assistance services from private attorneys (licensed professionals) constituted 71.9 percent of respondents, while 8.6 percent of respondents received legal assistance services from legal aid providing government institutions. Respondents who received legal assistance services from legal aid providing non-

government institutions constituted 10.3 percent of respondents, while 41.4 percent of respondents received legal assistance services from court officials.

Among court users, the respondents that considered divorce or domestic disputes as part of their justice needs constituted 48.5 percent of respondents, while 22.4 percent of respondents considered child maintenance and custody as part of their justice needs.

Respondents that considered inheritance issues part of their justice needs constituted 20.4 percent of respondents, while 29.6 percent of respondents considered contract issues as part of their justice needs.

Respondents that considered labor issues as part of their justice needs constituted 22.4 percent of respondents, while 20.4 percent of respondents considered damages and other monetary claims as part of their justice needs.

Those who considered property, including land use and related housing and ownership rights, part of their justice needs constituted 29.6 percent of respondents, while 22.4 percent of respondents considered

business matters related to licensing, supplies, taxation and so on as part of their justice needs.

For domestic violence issue, those who said it was part of their justice claims constituted 67.3 percent of respondents, while 61.2 percent of respondents considered physical violence at the community level as part of their justice needs.

Respondents that considered sexual abuse (including rape and abduction) issues part of their justice claims constituted 14.3 percent of respondents, while 16.3 percent of respondents considered sexual harassment (at work, in schools and other places) as part of their justice needs.

Trafficking in women and children was considered part of justice claims by 11.2 percent of respondents, while 13.3 percent of respondents or their households considered commercial sexual exploitation (such as prostitution) part of their justice needs.

Respondents or their households that considered child labor issues part of their justice claims constituted 17.3 percent of respondents, while 45.9 percent of respondents or their households considered unlawful arrest and detention as part of their justice needs.

Country conclusion

The respondents of the household survey, predominantly female, cited divorce and domestic dispute and domestic violence as their main legal issues followed by contract, physical violence at the community level, and abuse of power including corruption.

These respondents found access to courts and law enforcement agencies difficult to access, with the formal courts and the law enforcement agencies more difficult than with the local (traditional) courts. Most of the respondents highlighted multiple barriers to accessing the formal justice system, but with cultural and linguistic barriers and gender bias and discrimination by justice sector officials (including double victimization) the least serious barriers. Only 11.8 percent usually or always resorted to alternative and traditional justice mechanisms for redress.

Respondents also indicated that multiple barriers exist in their use of alternative non-formal justice mechanisms and raised similar issues regarding the formal justice system. The most serious barrier was the prolonged process and delay in the delivery of justice followed by partiality of personnel.

Over half of the respondents believed that the justice system works only for the rich and powerful while

slightly over half of respondents were neutral or did not accept that there were improvements in the accessibility of the court system in the past few years. Linked to this, the respondents overall therefore felt that the service provided by the formal justice system was not affordable, of good quality, or given in a timely manner.

Overall respondents indicated a lack awareness and knowledge of all aspects of legal information and legal aid. This is a gap that the Legal Aid Board, the Ministry of Justice, and the Bar Association should take responsibility for filling, in collaboration with other justice sector stakeholders.

Across rural and urban communities, more than half of respondents felt the level of legal information available was at least poor. An extremely high number of respondents (82.3 percent) had never received legal information from a lawyer or through awareness raising workshops and programs. Over 50 percent had received some legal information from personal contacts, while the majority had received legal information through print and electronic media (radio, TV, internet, leaflets, posters, billboards).

Over 70 percent of respondents felt that the availability of legal aid service was at least very poor.

Chapter 5

Zanzibar

"It is much easier to just deal with minor cases at the community level, and life goes on." A respondent's view on the merits of formal versus informal systems.

Introduction

Zanzibar, as a semi-autonomous part of Tanzania created in 1964, has its own executive, legislative, and judicial structure. The island group, which includes Unguja and Pemba as well as several smaller islands 25–50 kilometers off the mainland, feature a judiciary running from primary courts through to the high courts, as provided under the 1984 Constitution of Zanzibar.

The High Court has exclusive original jurisdiction over all matters, much like the High Court on the mainland, and its structure is much the same. The Court of Appeal in Dar es Salaam in Tanzania, in turn, handles all appeals from the High Court, and the High Court handles all appeals from the lower courts.

Magistrate's Courts take other cases, except for those falling under Islamic law, which are tried in the *Kadhi* courts. The Kadhi Courts, the lowest in

the system, hear all matters involving Muslim families, such as divorce, distribution of matrimonial assets, custody of children, and inheritance.

Among the leading grievances respondents had to the survey were issues related to divorce and domestic disputes, property issues, labor issues, and others. Domestic and sexual violence, though reported less, were still significant.

Regarding the accessibility of justice institutions, respondents considered formal courts more difficult than social and religious (*Kadhi*) courts. Yet, opinions about the accessibility of law enforcement institutions and courts were divided almost equally. Leading barriers to access included the prevalence of corruption, delays in justice, high costs, and lack of legal information on rights and the operations of the justice system.

Box 5

Key Findings

- Religious leaders have the most positive standing in communities. Tribal heads, judges, and magistrate are far behind.
- Most respondents said that the justice system works only for the rich and powerful, with more men than women holding this view.
- The opinions of urbanites and rural residents do not differ statistically.
- The judiciary ranks poorly in the public eye regarding affordability, timeliness, and quality service.
- Statistically significant differences in views about affordability and quality by location, but not gender.
- Very few people have high or very high awareness and knowledge of legal issues.

Institutional Framework, Judicial Structure, Legal Framework

The current Zanzibar Judiciary system is a model that has evolved from the abolition of the two-tier High Court structure (for His Highness the Sultan and Her Majesty High Court for British Subjects) that existed before the Zanzibar revolution of 1964.

The judiciary system today is made up of a single-tier High Court and Subordinate Courts which include Kadhis Courts. Most of the judicial and administrative staff are in Zanzibar city and operate out of the Palace of Justice which houses the High Court.

Survey Results

Among the leading common grievances, as noted, are those related to divorce and domestic disputes, property issues, bullying, labor issues, and damages and other monetary claims, and child support and custody issues. Domestic and sexual violence issues, although fewer people reported them, have a critical impact for the traumatic impact they can have on communities.

Gender differences were also revealed in the surveys: men were more likely to report business-related matters and women more likely to report family-related issues and issues linked to gender violence and abuse.

Survey participants were asked to rate how they perceived accessibility of formal courts, Sharia or Kadhi courts, law enforcement agencies (the police and public prosecutors), and social courts. On a comparative scale, people perceived social courts to be the most accessible (48 percent saying they are easy or very easy to access), followed by Kadhi courts (43 percent saying they are easy or very easy to access).

Law enforcement agencies followed in third, with nearly divided opinion (33 percent said they are easy or very easy to access while 31 percent that they are difficult or very difficult to access). Formal courts had the lowest rating of accessibility on a comparative scale and slightly more people (35 percent) said the formal courts are “difficult or very difficult” to access, compared to 31 percent saying they are “easy or very easy” to access.

Examination of barriers to accessing justice lead with corruption, prolonged process and delays in justice, high costs—for filing a case and hiring services of lawyers, and lack of legal information on rights and the operations of the justice system.

The religious courts are perceived to be a more reliable alternative to government courts, especially considering the high emotional costs, and costs caused by delays in completing hearings in the government courts.

Among households a high proportion of respondents could not form an opinion about performance of legal aid service providers (private attorneys and paralegals and other legal aid providers), as well as judges and magistrates. Respondents at the courts gave an especially negative assessment of performance to the police and assessed them more negatively than how household respondents assessed them, with more than 2 out of 5 saying their performance was “poor or very poor”.

Courts ranked poorly on impartiality, with a majority of respondents of both household and court-level surveys saying they were only serving the rich and powerful. This sentiment is echoed strongly in community focus group discussions. Among households, the feeling was that nothing had changed, while in the court survey’s respondents were nearly evenly divided between those who said access for the vulnerable had improved than those who disagree with this assertion. Men were especially convinced that the vulnerable groups had not fared any better.

Courts also ranked poorly in how they delivered on affordability, timeliness, and quality of service to clients. Most respondents of the household survey said they “never” or only “seldom” delivered affordable, timely, and quality service. This issue is echoed in both court user surveys and focus group discussions. In the court user survey, a slightly higher proportion of respondents felt that the court process is “never or seldom” timely and efficient, compared to those who said it was “often or always” efficient. In the community focus groups, accounts based on personal experiences and those of household and community members were narrated to express frustration with the way courts delivered, especially on timeliness. However, court users perceived that courts were ensuring relatively well that they used accurate information in decisions and in providing space to litigants to express themselves.

Legal literacy and access to legal aid service

Generally, very few people attested to “high or very high” awareness and knowledge of legal issues. For many people in communities, nearly 2 out of 5, the self-assessment of extent of legal literacy they possess is “poor or very poor” about laws of the land, individual rights before the law, working of the legal system and availability of legal aid. The consequence is that some people experience barriers in accessing legal services they may need. Negative perceptions about court performance also arise due to misinformation justice process procedures and rights of individuals.

The predominant view about availability of legal information in communities lies somewhere between “moderate” and “poor or very poor”. Moreover, information channels had not been able to reach a sufficiently large proportion of community members with legal information. A significant majority (more than 80 percent) said information sources such as print and electronic

media, awareness raising workshops and programs, community outreach programs, and professional lawyers had “never or seldom” served them as a source of legal information. Respondents of the survey also felt that availability of free legal aid is at best “moderate”, with a much higher proportion of respondents saying free legal aid services’ availability in their communities was “poor or very poor” compared to those who thought it was “high or very high.”

Improving legal literacy, access to information, and making free legal aid services available in communities are therefore all critical as part of a broad national effort to improve access to justice. Working to alleviate integrity concerns the public has on government courts is also essential and here the Kadhi courts, which the study participants generally felt were more responsive, efficient and fairer in handling of clients, may provide some lessons on how to unlock the internal constraints to integrity.

Country Conclusion

The quantitative surveys in households and courts as well as focus group discussions together highlight important justice needs in communities, as well as gaps in how the justice system works to meet them. This chapter highlights efforts to improve access to justice that Zanzibar can focus on. It also provides additional analysis of court statistics to help contextualize the findings from the surveys and FDs.

The highlighted themes are not an exhaustive listing of possible issues that can and would need to be addressed. Nonetheless, it is hoped that they provide reasonable indications of areas where priority attention can be directed. The issues are grouped along three broad themes within which several sub-themes can still be recognized.

- Responding to the common legal issues and grievances in communities
- Improving the functioning of the justice system

- Improving legal literacy and access to legal assistance services

The leading common legal issues and grievances, as noted earlier, include divorce and domestic disputes, bullying, labor issues, damages and monetary claims of various kinds as, and child maintenance and custody issues.

Even though reliance on formal justice mechanisms is growing, more effort may be needed to support the informal alternatives and to relieve them of their growing burdens. Authorities could consider fostering collaboration between state-funded and nonstate-supported mechanisms, by prioritizing areas where community members see such mechanisms as more effective. This is especially important where resources are limited in the formal justice system, as in Zanzibar.

Improving the functioning of the justice system

The structures a justice system needs already exist in Zanzibar. But survey findings raise questions about efficiency and responsiveness (timeliness, affordability and quality of services). Issues are

also raised about fairness of treatment between the weak and vulnerable and the rich and powerful. When comparisons are made between secular courts and religious kadhi courts, the predominant

sentiment is that the latter embody model features of efficiency and effectiveness that would be ideal to see in the government run courts too.

Still, even while integrity issues might be at play, some of the dissatisfaction expressed by community members may reflect institutional resource gaps afflicting the formal justice system.

For example, the Zanzibar judiciary statistics show that the actual budgetary resources spent between 2011/12 and 2015/17 ranged between Tanzanian shillings 571 million and 805 million (2013/14 highest). In per capita terms, annual realized budgets per capita have hovered below 500 shillings, during the last five years, between 2011/12 and 2015/16.

Improving legal literacy and access to legal assistance services

Improving legal literacy can improve the process of accessing justice while also changing misconceptions about the justice system. Findings from the surveys show that quite a few people in communities can claim to have “high” or “very high” awareness and knowledge of legal issues. And while about 2 out of 5 of our participants in this study claim “moderate” levels of awareness and knowledge of legal issues, a sizeable group assesses their legal literacy as “poor or very poor.” Community focus group discussions confirmed the concern that a lack of knowledge has affected individuals access to justice, and their views of law enforcement officials.

So far however, many information sources have reached very few community members in a significant way. There may be issues at play on the supply side in terms of how the content is packaged, how easy it can be found, and how widespread distribution of such information has been. There may also be issues linked to individual incentive to improve their legal literacy. Robust initiatives are needed to improve availability and accessibility of information on legal issues.

With respect to supply and accessibility of legal assistance services, the formal justice system officials, especially court officials, are the first stop

for legal services assistance for individuals with litigations in courts. However, considering the resource-strapped nature of courts, the ability to serve court users may not match the demand for their services. Improving availability and awareness of existence of alternative sources of legal service assistance such as paralegals services is essential. From the findings in this survey, one out of three respondents indicated they knew very little about these legal service providers to form an opinion about them.

Some suggestions include:

- Training of a few people in communities as mentors on basic law, and equipping them to train others, including on how they should approach justice institutions and procedures to follow when they have legal issues warranting their attention.
- Conducting regular outreaches (such as seminars) or providing mobile legal service clinics (for example one visit per week) in the communities, particularly in rural areas, to give assistance to community members with issues related to court.
- The government should consider training on basic legal issues in schools, for example, as part of the civic education curriculum.

Access to Justice Challenges: Cross-Country Comparison

Across 36 countries, a slim majority (53 percent) of Africans express confidence in the courts, but in 10 countries, 40 percent or fewer trust the courts. One in three believe that "most" or "all" judges and magistrates engage in corruption. Afrobarometer, 2017.

Introduction

Whatever the degree of differences in the delivery of services in the formal justice systems of Cameroon, Ethiopia, Sierra Leone, and Zanzibar, the challenges trend around common themes. These include excessive delays in handling both civil and criminal cases, corruption through political interference, influence-peddling, or the soliciting of bribes by low-level court administrative staff.

Limited access to services for much of the population, particularly legal assistance, is also a typical experience across the continent, with the absence of remedies for handling common disputes, and the likelihood that judgments are of poor quality.

These shortcomings are a function of stretched national budgets, which are usually small even as the wage bill for civil servants may take a notable slice. They usually reflect:

- A shortage of judges, prosecutors, public defenders, and police and their lack of presence outside of urban centers
- Poor training of judges, clerical staff and lack of coordination with other sector actors, as well as inadequate compensation for all
- Shortage of lawyers—in both the public and private sectors
- Inadequate equipment and infrastructure, and lack of basic materials (such as paper, ink, and office equipment)
- Inadequate and often inconsistent legal frameworks (including failure to define the

jurisdictions in countries with plural legal systems)

- Judges lack of access to information on laws and higher court decisions and their incomplete understanding of alternative systems and
- Complex court proceedings, whether written or oral, and their conduct in languages not understood by many African citizens.

In Cameroon, general impediments include low salaries and nonpayment to judicial authorities and lawyers, inaccessible services, and delays in the delivery of rulings. Some specific barriers to women and children are socio-economic, but institutional discrimination also still exists.

In Ethiopia, they include weak public perception and practice of courts and judicial processes, lack of courtroom facilities and limited human resources. Gaps in institutionalizing alternative dispute resolution are also prevalent, along with limitations in the provision and coordination of legal aid and legal literacy services.

People in Sierra Leone report especially frustrating experiences with the formal legal system and women in particular face high barriers in both customary and common law systems, including inability to afford legal representation, little knowledge of their rights or understanding of legal procedures.

In Zanzibar, leading grievances with the system that respondents to the survey expressed were

issues related to divorce and domestic disputes, property issues, labor issues, and others. Domestic

and sexual violence, though reported less as a source of community trauma, were still important.

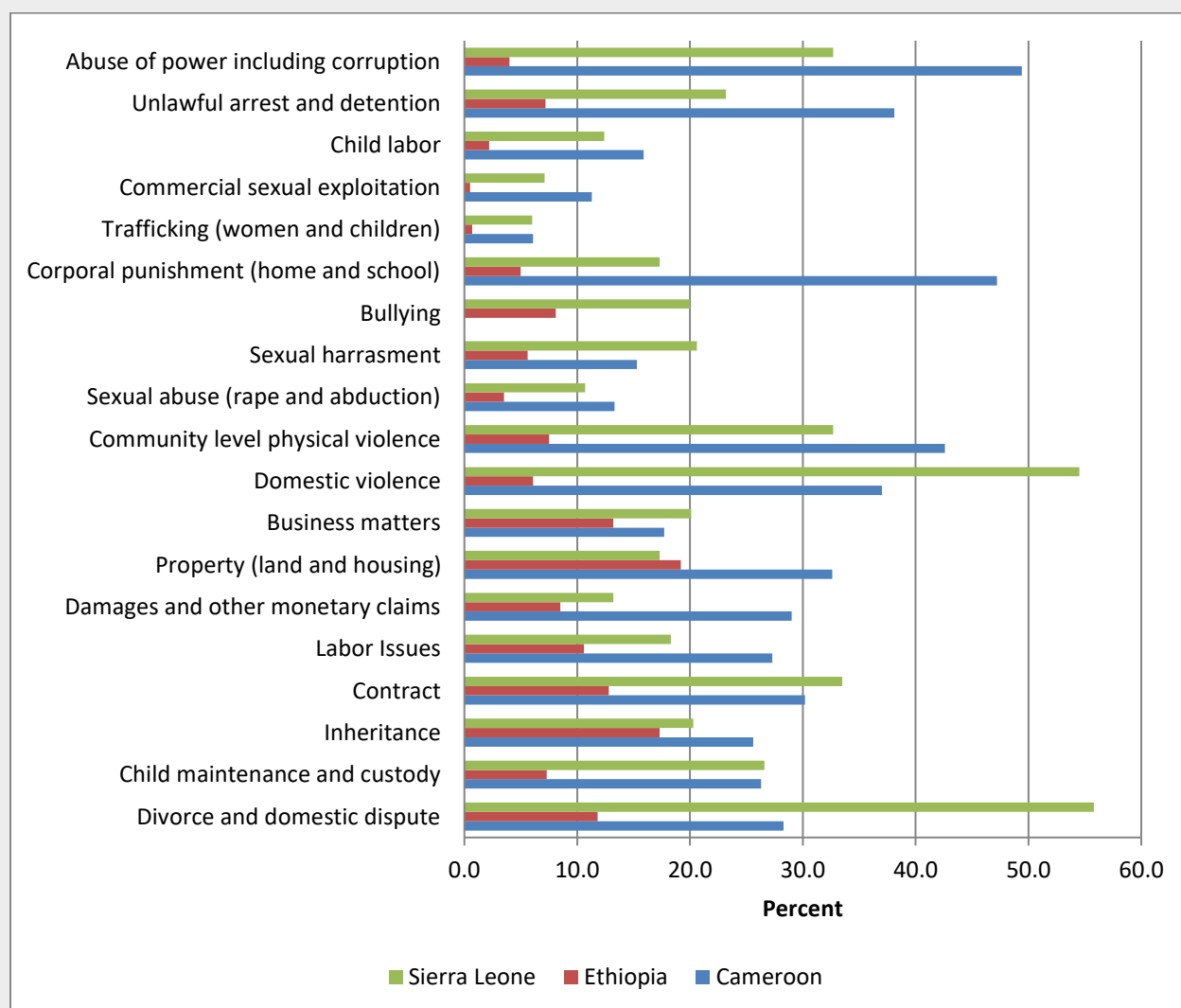
Cross-Country Comparison on Barriers to Access Justice

Examination of legal issues

From the household surveys it is evident that respondents from all four jurisdictions have encountered the entire range of legal issues and grievances identified in the desk review. Figure 5 shows the prevalence of each issue within each country, as well as providing cross-country comparisons.

It is clear that Cameroon and Sierra Leone reported higher volumes of legal issues than Ethiopia. This could be attributed to the Ethiopian government's commitment to harmonize basic laws with international standards. It reinforces that Ethiopia's legal and policy framework is conducive to protecting the rights of the vulnerable.

Figure 5 | Legal Issues Reported by Households

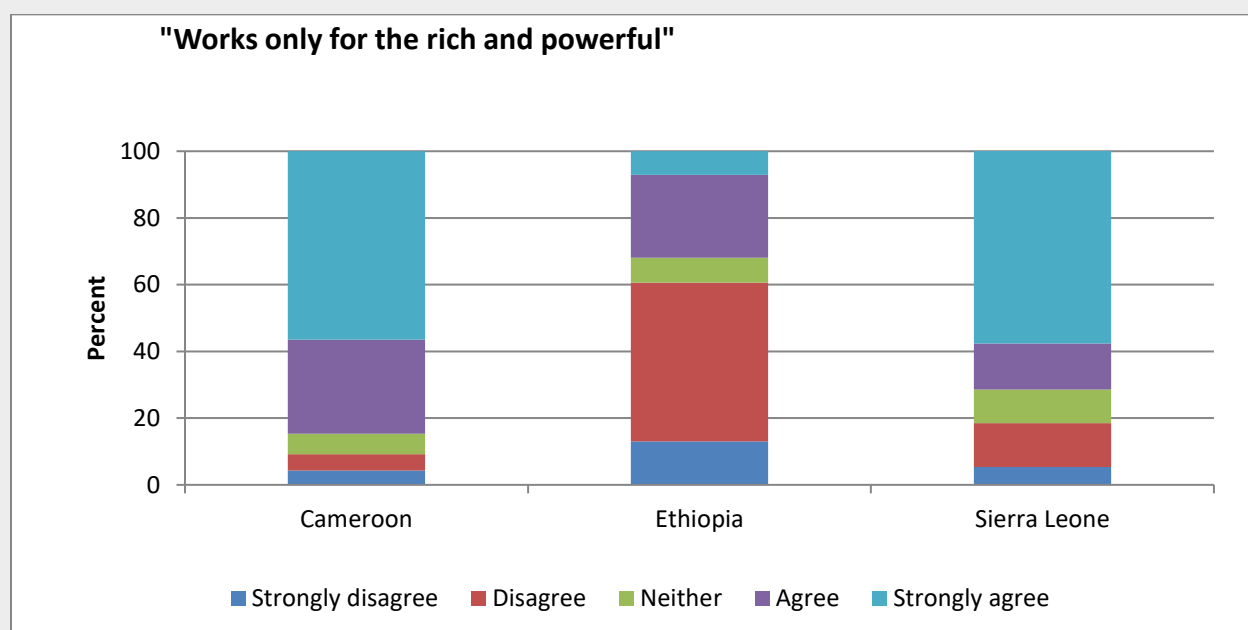


Furthermore, there is greater similarity between Cameroon and Sierra Leone on the frequency of the type of legal issues reported. In both countries, a high percentage of respondents cited abuse of power (corruption), domestic violence, and community level physical violence as legal issues. For Sierra Leone a high percentage also reported issues with contract and divorce/domestic disputes. In Cameroon, a high percentage cited issues such as unlawful arrest and detention, corporal punishment (home and school), and property as legal issues encountered. Again, an important factor here is that Cameroon and Sierra Leone continue to face certain obstacles, particularly political instability, that it is preventing

them from transitioning to a fully democratic country, and thus constitutional rights are not being entrenched into society's regular practices.

For instance, the results produce telling differences in how households perceive fairness in the justice system—specifically that it works for the rich and powerful. For both Cameroon and Sierra Leone, the dominant light blue represents a strong agreement with the perception that the justice system works only for the rich and powerful. Whereas the dominant red in Ethiopia's bar represents disagreement with this statement. Overwhelmingly Ethiopians' overall perception of their justice system is positive.

Figure 6 | Perception of Fairness of the Judicial System—Households



Looking at reported legal issues in Ethiopia, less than 20 percent of households cited encountering the legal issues identified by the desk review. The most common one encountered by Ethiopians was

property (land/housing) and inheritance. Less than 10 percent of respondents reported encountering corruption and community level violence.

Evaluation of the Court System

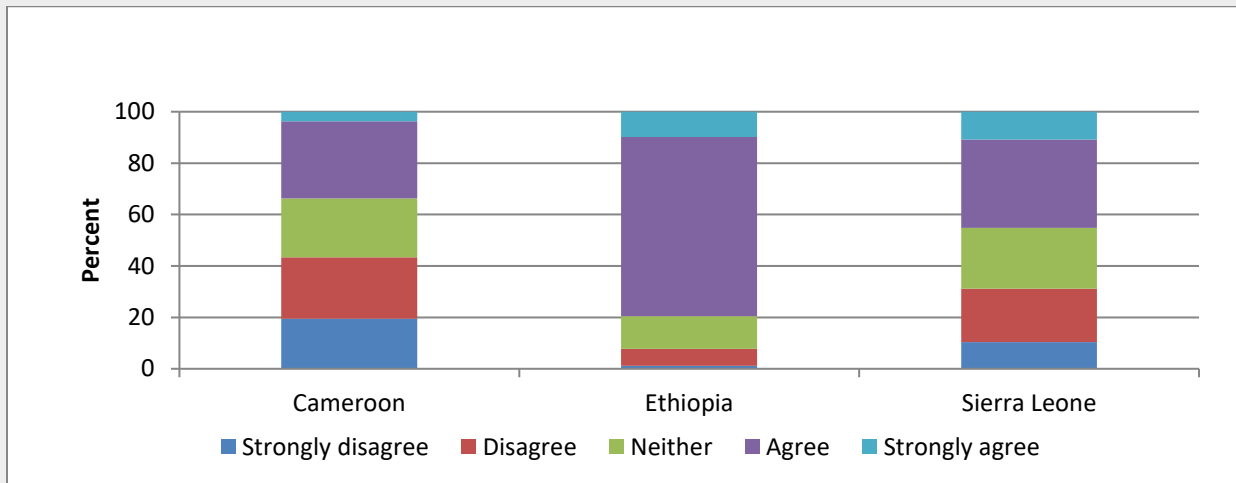
Also examined is the household perception of respondents across the three countries on improvements on the court system. As demonstrated in the graph below, most Ethiopians

agree (69.7 percent) their court system has improved. In Sierra Leone, respondents lean more toward agreeing (34.4 percent), but a substantial number are indifferent (23.7 percent). As for

Cameroon, just over 40 percent strongly disagree or disagree that the court system has improved, while 22.9 percent are indifferent. Given that a

majority of Cameroonians distrust the justice system as a result of corruption and discrimination, that result is unsurprising.

Figure 7 | Perception of Improvements in the Court System—Households

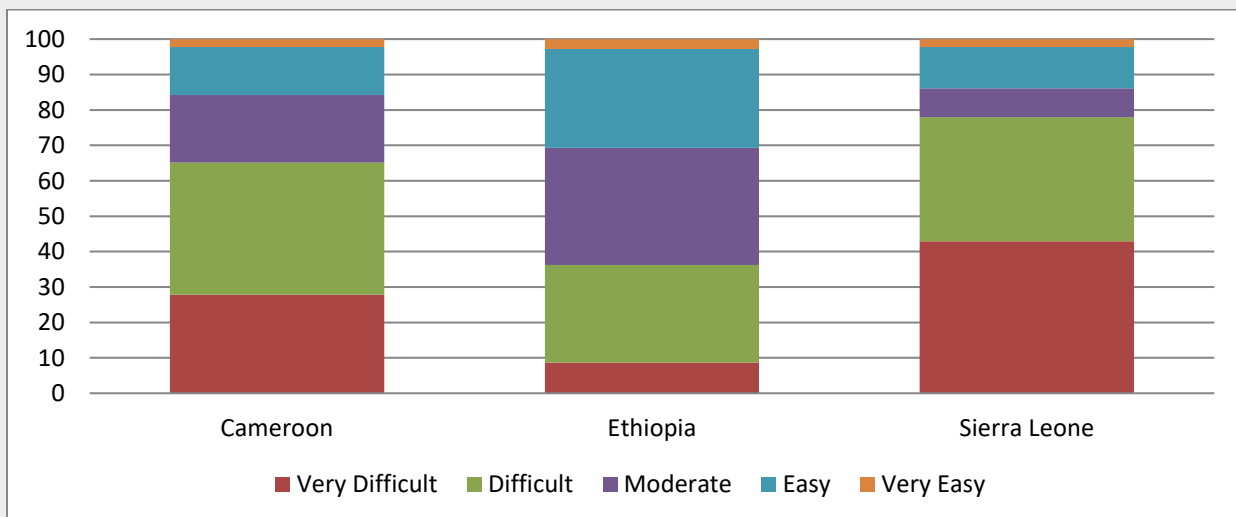


Next, views were analyzed on the degree of accessibility to formal courts, social/local courts, and law enforcement agencies. The results from the household perceptions questions align with those of accessibility.

In Ethiopia, respondents responded favorably on the perception of fairness in the justice system and court system overall. Most households found access to the formal courts moderate (33.1

percent), while 27.9 percent found it easy, and 27.5 percent said it was difficult. However, in social and local courts, accessibility was easy for 52.1 percent of households, moderate for 28.8 percent, and difficult for 11.5 percent. Half of the household respondents felt accessibility to law enforcement agencies was easy, while 22.3 percent found accessibility moderate, and 17.6 percent said it was difficult.

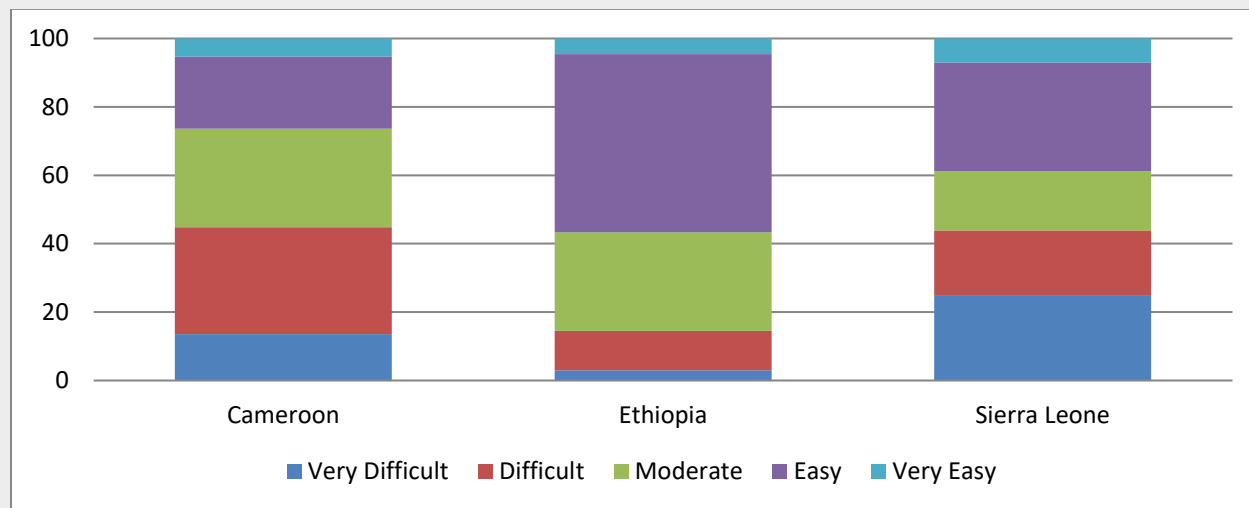
Figure 8 | Degree of Accessibility to Formal Courts—Households



In Cameroon, households were much more divided about accessibility to courts and law enforcement. Most respondents found access to formal courts either very difficult (27.8 percent) or difficult (37.3) percent. They were much more divided on accessibility to social/local courts, with 13.6

percent describing it as very difficult, 31.2 percent difficult, 28.8 percent moderate and 21.1 percent easy. Similarly, 18.7 percent found accessibility to law enforcement to be difficult, 21.6 percent moderate, 32.6 percent easy, and 17.6 percent very easy.

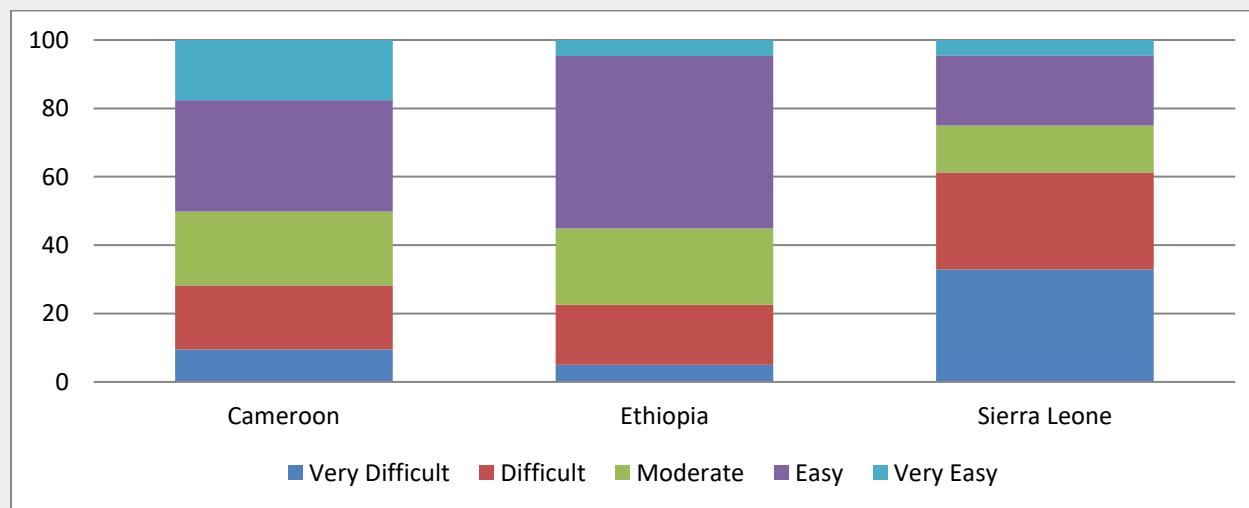
Figure 9 | Degree of Accessibility to Social/Local Courts—Households



In Sierra Leone, perceptions of accessibility between the formal courts and social/local courts vary greatly. Access to formal courts was seen as very difficult or difficult by 78 percent of households found access to formal courts either very difficult (42.9 percent) or difficult (35.1 percent). Views were split on the accessibility of

social/local courts: 25 percent found it very difficult, 18.9 percent difficult, 17.3 percent moderate, and 31.8 percent easy. On access to law enforcement agencies, 32.9 percent of households found it very difficult 28.4 percent difficult. However, 13.7 percent were indifferent, and 20.5 percent regarded accessibility as easy.

Figure 10 | Accessibility to Law Enforcement Agencies—Households



Barriers to Justice

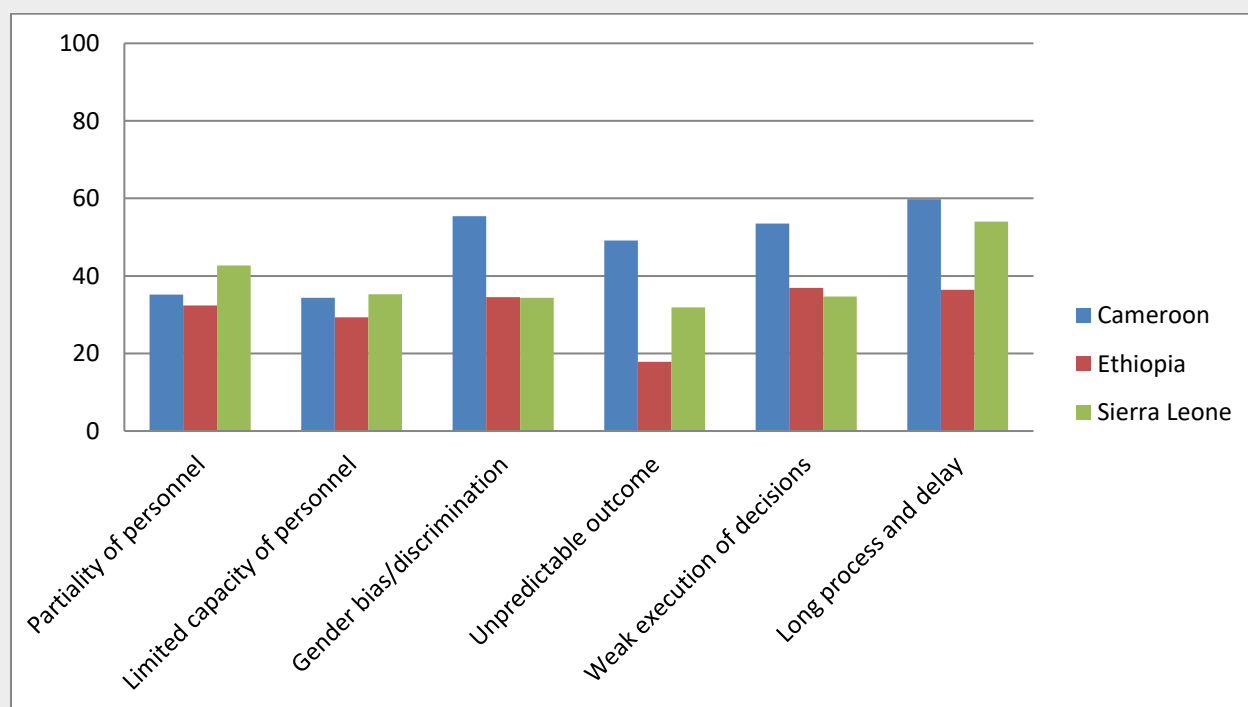
This section examines the various barriers to accessing justice that vulnerable groups face. Commonalities and differences across the three countries are identified, and the data is used to inform recommendations and policy directions.

As Table 1 in the introduction identified, there are numerous barriers vulnerable groups face when trying to access justice. The data revealed many commonalities across the three countries, but certain barriers are more widespread than others. The highlighted barriers in Table 1 are those that were identified by less than 50 percent of those surveyed. While not categorized as a “serious barrier” it should be noted that some were still considered a strong barrier to justice by just under

half of the households in Cameroon or Sierra Leone, such as the barriers of ‘complex of procedure’ and ‘incompetence.’ However, non-serious barriers are intrinsically related to the barriers ‘lack of information’ and ‘access to legal aid.’ Thus, all the barriers are interconnected and cannot be viewed or resolved in isolation.

As seen below, households in Ethiopia and Sierra Leone do not see serious barriers to access informal justice mechanisms. However, perceptions for some barriers are notably distinct in Cameroon. More than half the respondents in Cameroon regarded gender bias/discrimination, weak execution of decisions, and long process and delay as serious issues.

Figure 11 | Barriers to Informal Justice Mechanisms—Households



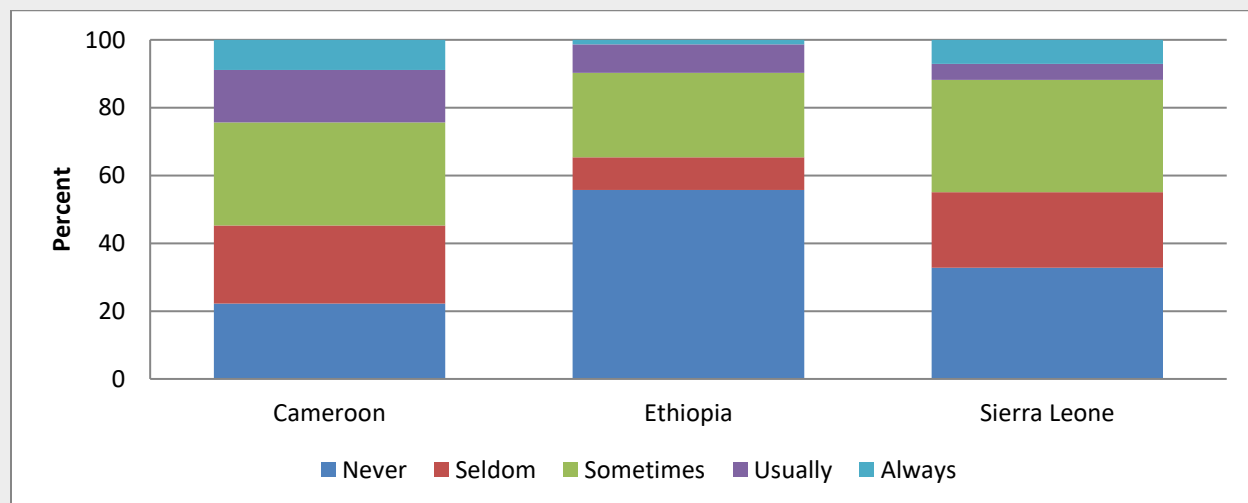
At first glance of data traditional/alternative justice mechanisms, it is apparent that these are much less used. More than half the respondents in Ethiopia and Sierra Leone had either never used or seldom use traditional/alternative justice mechanisms. Thus, while there may be fewer barriers to access, they likely are insufficient or lack the authority needed to resolve many legal issues.

However, in Cameroon, more than half report having turned to these alternatives to the court system. Of them, 30.3 percent reported doing so sometimes, 15.5 percent usually, and 8.9 percent said they always seek out traditional/alternative justice mechanisms to resolve legal issues. A significant factor in this is that most respondents in Cameroon said they no longer have sufficient confidence in the ability of the judiciary to deliver justice fairly and in an independent way. Informal

and traditional justice mechanisms benefit from greater public trust. That contrasts with Ethiopia, where recent judicial reforms clearly have improved public perception: the household survey

found 59.2 percent of men and 68 percent of women were not frequent users of informal justice mechanisms.

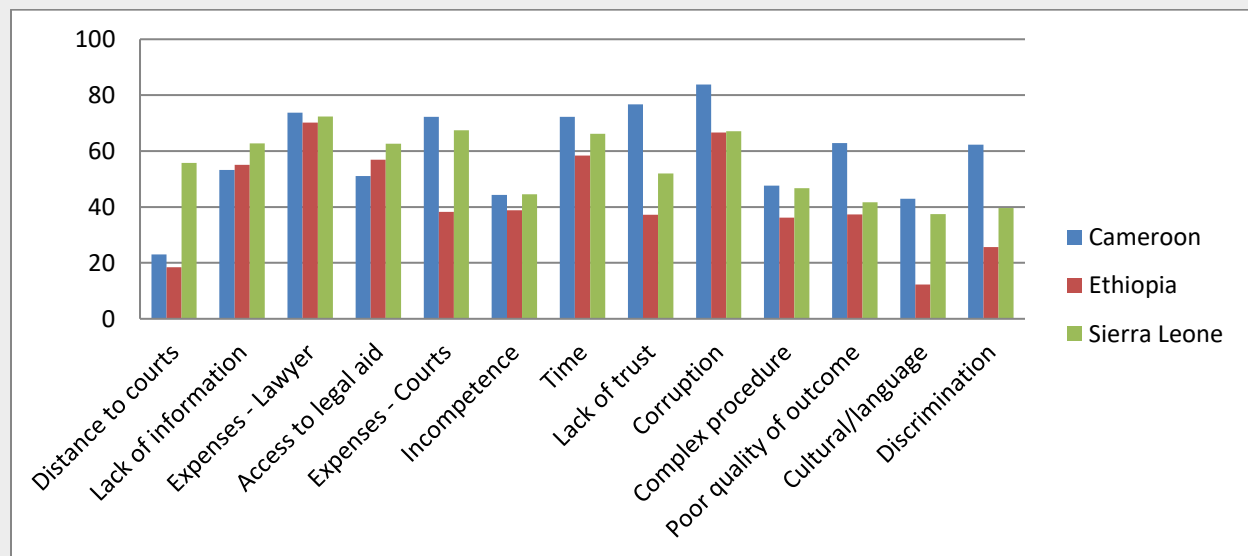
Figure 12 | Households Using Traditional/Alternative Justice Mechanisms



The figure below shows household perception of the 13 identified barriers to access formal justice mechanisms. Analysis of survey data from each country confirms that people in vulnerable groups have experienced them all, but with variable degree of seriousness in each country. Clearly, the households in all three countries regard formal justice mechanisms as burdensome than non-

formal/traditional and social justice mechanisms. Therefore, since over half the surveyed households from each country regard most of the 13 barriers as serious, significant failures exist in the capability of the formal justice system to meet the needs of the population for legal services. The core barriers that SSA faces are examined in greater detail in the next section.

Figure 13 | Household Perception of Barriers to Formal Justice Mechanisms



Core Barriers for Sub-Saharan Africa

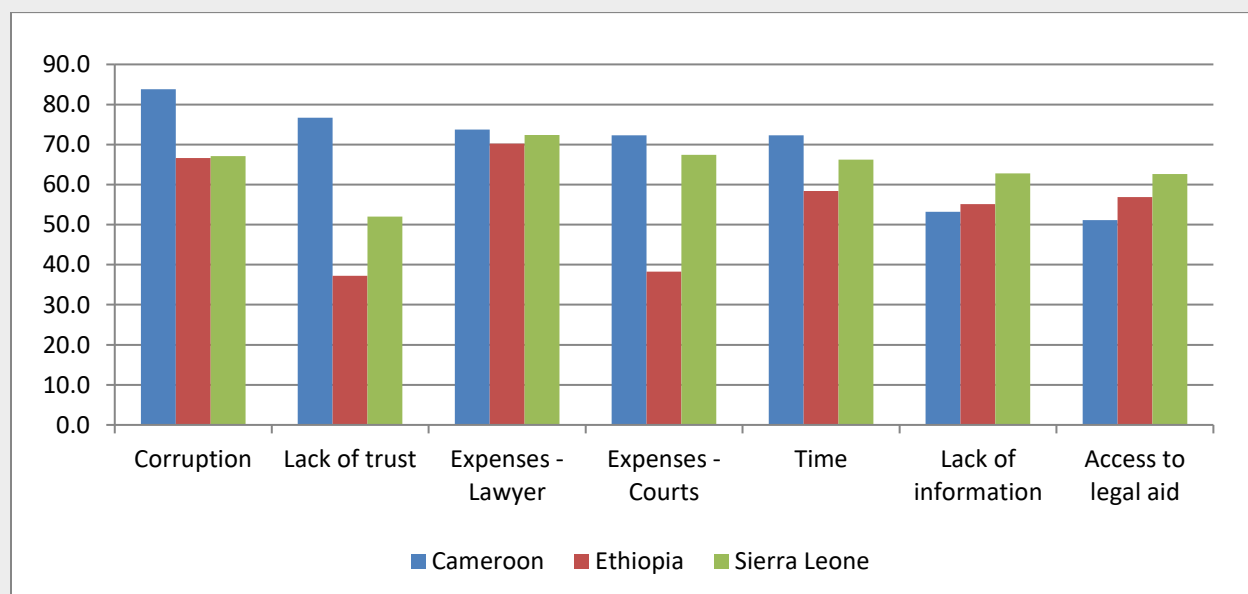
Table 2 in the introduction, as noted, isolates the serious barriers identified by households from the three countries. The barriers are categorized as serious, moderate and non-serious barriers. Serious barriers are those that 50 percent or more of those surveyed in each country see as significant. The highlighted data illustrates that in many cases respondents in one country (usually Ethiopia) ranked these barriers much lower than in the others. In this case, those with at least two highlights were not identified as serious but as moderate barriers.

Significant gains have been made in Ethiopia in ensuring access to justice of vulnerable groups, due to successive multifaceted reform programs implemented by the government. In particular, Ethiopians acknowledge the improvements in accessing the court system, and see courts as fair and efficient.

It is interesting to note the three countries all share similar serious barriers. These are: lawyer expenses, corruption, and time/delay in the delivery of justice. This is followed by absence or limited accessibility of legal aid services and court expenses in all except Ethiopia. Left unchecked, serious barriers can result in vulnerable groups feeling they are experiencing more barriers. For instance, the behavior of judicial staff evidently points to a high level of corruption (alleged or real), which has the effect of causing discrimination and poor-quality decisions, all of which may dent the confidence of users in the system. All these barriers are interdependent.

The data showed vulnerable groups of the three countries encountered the same serious barriers when attempting to access justice. The seven serious barriers that will be examined in greater detail include: corruption, lack of trust, expenses (lawyer/courts), time, lack of information, and access to legal aid.

Figure 14 | Cross-Country Analysis of Barriers



Source: NTF surveys

One prominent barrier in Figure 14 above is lawyer expenses. In all three countries around 70 percent of respondents viewed this as a serious barrier. While Ethiopia's justice system has evidently made

much progress, it seems that most of the population feel the costs of hiring a lawyer are too high. While general costs of justice—such as court expenses—are seen as affordable, lawyer

expenses along with the near absence of *pro bono* services are regarded as a downside.

With 83.8 percent of households ranking corruption as a serious barrier in Cameroon, it is clear that its real or perceived effects are a significant obstacle for the vulnerable seeking to access the justice system. Yet, corruption is still ranked as serious by households in Sierra Leone (67.1 percent) and Ethiopia (66.6 percent). For a justice system to succeed, its users must believe it can and will administer justice fairly and independently.

The fundamental challenge of institutional strengthening in Africa is how to help organizations resolve service deficiencies without substantial increases in their budgetary base and sustaining reform efforts. Core public sector reforms within formal justice institutions are a critical necessity. These include introducing performance or results-based budgeting including the monitoring of funds, human resources reform (for example selection and promotion of personnel) and automation of court administration and case management (which may often include information technology systems and training).

Gender and Marital Gaps in Judicial Services

Introduction

Very little is known about gender gaps in judicial service needs in SSA. However, widely documented gender gaps in socioeconomic outcomes—such as labor market participation, property rights, entrepreneurship, exposure to violence (from intimate partners or other members of the community)—might trigger gender-specific needs for judicial services. Measuring these needs and understanding how they originate is therefore crucial in the design of policies empowering women. (World Development Report 2012).³⁹

Women’s marital status might magnify or reduce gender gaps in individuals’ needs for judicial services. Married women might be engaged in very different economic activities than never-married women, implying different judicial needs for business and issues related to labor contracts. Marriage might also protect against some forms of gender-based violence against women, albeit offset by potentially higher potential for intimate partner violence. These differences across marital status can be less pronounced for men, implying a gender gap in judicial needs across these groups.

Using data from the access to justice surveys carried out in Ethiopia, Serra Leone, Cameroon, Mauritania, and Zanzibar (described in earlier chapters of this Book) gender gaps in judicial needs are explored and their heterogeneity associated with marital status in survey countries. Female respondents are more prone to report a need for judicial services related to family and human rights-related legal grievances, whereas men more often need services related to property rights, business, and labor issues.

Widows and divorced women report more frequent need than currently married and never-married women do for issues related to domestic disputes, physical violence at the community level, child labor, inheritance, and property rights. These differences highlight the specific vulnerabilities that women in these countries face when they are not married, including exposure to violence and maintaining secure access to land and property.

Data and Method

Data

Household data was utilized from the Access to Justice and Voice of the Vulnerable survey.⁴⁰ It is important to keep in mind that while the data does provide unique insight into individual legal needs,

these are not representative at the national level. In all five surveys, respondents were asked about their gender, age, marital status, and level of education (table 2). Interestingly, the sample

³⁹ See World Development Report 2012: Gender Equality and Development. Chapter 4: Promoting women’s agency.

⁴⁰ For a detailed description of the survey, including sampling strategy, questionnaires, data collection implementation, and timeline by country see <http://voicesofthevulnerable.com/>.

shows variations in gender and marital status across countries, which was used to explore

heterogeneous gender gaps in the need for judicial services.

Table 2 | Descriptive Statistics

	Cameroon	Ethiopia	Sierra Leone	Zanzibar	Mauritania
<i>Variables</i>					
Female	49%	30%	38%	49%	59%
Male	51%	70%	62%	51%	41%
Age	32.8	29.3	36.7	39.1	33.59
<i>Marital Status—Male</i>					
Never married	49%	90%	35%	23%	41%
Married	47%	9%	53%	73%	57%
Divorce	2%	1%	9%	4%	1%
Widow	2%	0%	3%	0%	1%
<i>Marital Status—Female</i>					
Never married	41%	47%	26%	12%	12%
Married	49%	42%	53%	75%	68%
Divorce	4%	4%	8%	8%	15%
Widow	6%	7%	13%	5%	6%
<i>Education Level</i>					
Not literate	2%	7%	30%	10%	20%
Read and write	0%	4%	6%	4%	27%
Primary school	12%	4%	13%	32%	15%
Junior secondary school	19%	18%	22%	46%	10%
Senior secondary school	18%	41%	21%	2%	4%
College diploma	50%	26%	9%	6%	3%
N	1,207	1,289	596	452	973

Source: NTF surveys .

Outcome variables

The main outcome variables relate to respondents' needs for judicial services are expressed in the answer to the following question: *Have the following legal issues and grievances ever arisen as judicial needs for you or your household?* Respondents could answer *yes* or *no* to this question for a list of 19 legal issues and grievances (table 3). The legal issues and grievances can be sorted into three broad categories: (i) family, (ii) human rights and (iii) civil and labor contracts. Judicial needs that arise more frequently for the overall sample are divorce and domestic dispute, domestic violence, abuse of power, and property. Other needs, such as related to sexual

harassment, commercial sexual exploitation, and child labor, show low prevalence rates, potentially reflecting underreporting.

Notice that the question is asked for the respondent *and* members of his or her household. The gender gaps will thus tend to be attenuated for married, divorced, and widowed respondents who reported needs for themselves and for household members of the opposite gender. Never-married respondents might also report on judicial needs from opposite gender household members, such as parents and siblings, but with a lower probability.

Table 3 | Reported Need for Judicial Services

	Respondents Reporting this Need	
Family	Divorce and domestic dispute	22%
	Child maintenance and custody	16%
	Domestic Violence	20%
Human rights	Physical violence at the community	19%
	Sexual abuse (including rape and abduction)	8%
	Sexual harassment (at work, in school and other places)	7%
	Bullying	10%
	Corporal punishment at home or in school	6%
	Trafficking in women and children	3%
	Commercial sexual exploitation (such as prostitution)	5%
	Child Labor	7%
Civil and labor contracts	Labor Issue	14%
	Business matters related to licensing, supplies, taxation	13%
	Abuse of power including corruption	22%
	Inheritance	16%
	Contract	17%
	Damage and other monetary claims	14%
	Property (land use, related housing and ownership rights)	22%
	Unlawful arrest and detention	16%

Statistical models used for gender and marital gaps identification

First, e for estimating gender gaps in judicial needs the following ordinary least squares (OLS) models were used:

$$Y_{i,c} = \alpha + \beta F_i + \gamma X_i + \delta C_i + \varepsilon_i \tag{1}$$

Where $Y_{i,c}$ is a dummy variable equal to 1 if respondent i in country c answers “yes” to the question on whether judicial needs for legal issue or grievance Y have ever arisen for the respondent or her/his household. F_i is respondent’s gender, equal to 1 if the respondent is female. X_i is an array of control variables including age and education level. C_i is a dummy variable indicating country for respondent i .

Second, for exploring the marital heterogeneity of gender gaps the following model was used:

$$Y_{i,c} = \alpha + \beta^{FM} FM_i + \beta^{MM} MM_i + \beta^{MNM} MNM_i + \gamma X_i + \delta C_i + \varepsilon_i \tag{2}$$

Where FM_i , MM_i , MNM_i are dummy variables indicating, respectively, whether respondent i is female married, male married, or male never married. Widowed and divorced women from this analysis were excluded but were considered in the later analysis. This specification implies a comparison with the reference group female never married. To compare the magnitudes of the OLS estimates (2) three independent two-sided t-test were run for the three null hypothesis $H_0^1: 0 = \beta^{FM} - \beta^{MM}$, $H_0^2: 0 = \beta^{MM} - \beta^{MNM}$ and $H_0^3: 0 = \beta^{FM} - \beta^{MNM}$.

Finally, the specific needs for judicial services of divorced and widowed women is estimated, when compared to never married or currently married

female respondents. This is done so by using the following model on the female sample only:⁴¹

$$Y_{i,c} = \alpha + \beta^{FM} FM_i + \beta^{FDW} FDW_i + \gamma X_i + \delta C_i + \varepsilon_i \quad (3)$$

Where FM_i and FDW_i are dummy variables indicating, respectively, whether respondent i is female married and female divorced or widowed. Consistent with the previous model, the reference group here is female never married. In this case,

one independent two-sided t-test is run for the null hypothesis $H_0^1: 0 = \beta^{FM} - \beta^{FDW}$.

Age and education level are the only controls available in all NTF surveys. While recognizing the potential endogeneity and bias issues related to missing explanatory variables, the goal here is not to identify causal relationships between the variables observed, but to highlight correlations of interest in the data.

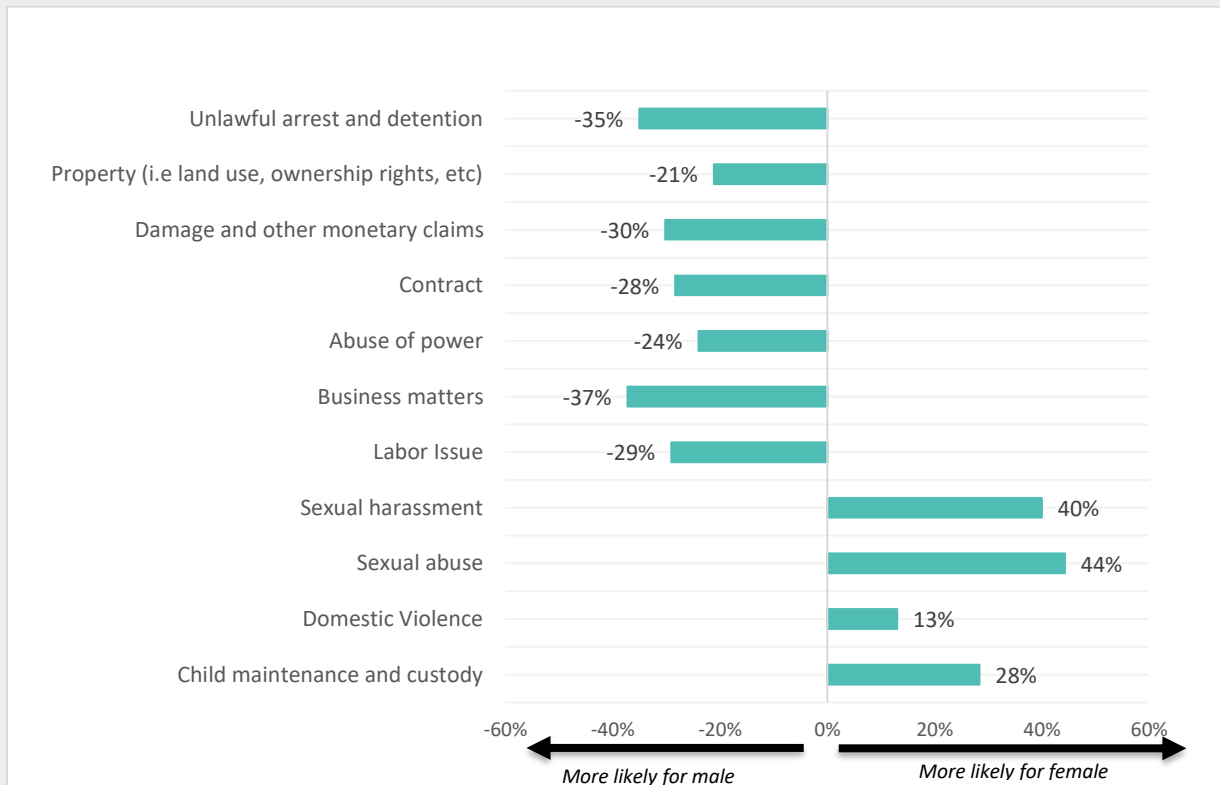
Results

Gender gaps in judicial needs

Figure 15 shows the percentages of the gender gap estimated in model (1). Only statistically significant gaps are reported. In this model, male respondents are the comparison category, meaning a bar that is to the right side of the 0

corresponds to higher judicial needs for females. For instance, female respondents report 28 percentage more often than men to have judicial needs related to child maintenance and custody. Several interesting correlations of interest emerge.

Figure 15 | Gender Gap Estimates by Judicial Need



⁴¹ Divorced or widowed males represent a very small share of the sample and are thus not considered in this analysis.

Note: Ordinary least squares estimate controlling for age, education level, and country fixed-effect. Comparison category: Men report gaps significant at the 0.1 level. Reading example: Female respondents report judicial needs 28 percent more often for child maintenance and custody than men do.

Female respondents are more prone to report judicial needs related to family and human rights. They more often report judicial needs related to child maintenance and custody (28 percent more than men do), domestic violence (13 percent more than men), and sexual abuse (44 percent more than men) or harassment (40 percent more than men). These estimates align with the fact that

women are generally more prone to be victims of sexual and gender-based or intimate-partner violence.

In contrast, male respondents more often to need judicial services related to civil and labor contracts than female. The observed differences go from 21 percent for issues related to business (licensing, supplies, taxes) up to 37 percent for business matters. These correlations of interest are consistent with widely documented gender gaps in formal entrepreneurship (female businesses being concentrated in the informal sector), labor market participation, property rights, implying lower exposure of women to legal issues and grievances related to civil and labor contracts.

Heterogeneity across marital status

Figure 16 reports OLS estimates from model (2). Female and male respondents were compared by marital status and the category used for comparison is female never married. In this specification, a bar toward the left thus means judicial needs are lower when comparing to never-married women. For example, commercial sexual exploitation is 47percent less likely to arise as a judicial need for never-married males than for never-married females.

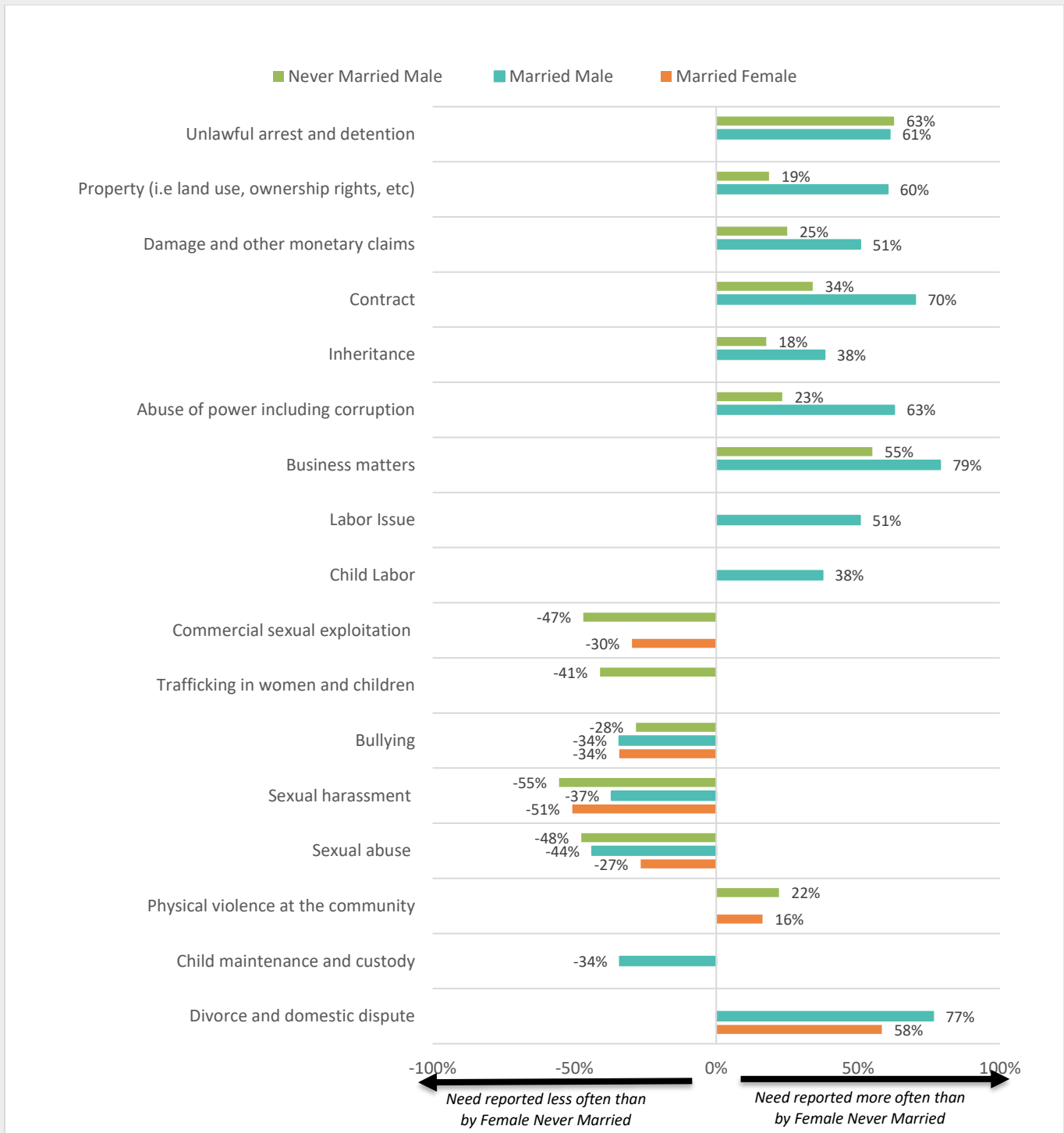
Married females, married males, and never-married males are less likely to report judicial needs related to sexual abuse, sexual harassment, and bullying than never-married women. The

corresponding gaps range from 55percent (sexual harassment) to 27percent (sexual abuse).⁴²

The gender gaps in judicial needs related to civil and labor contract issues seem to hold irrespective of marital status. Indeed, similar to the results reported in figure 15, married and never-married males report significantly more judicial service needs related to civil and labor contracts than never-married females. The corresponding gaps go from 18percent (inheritance) to 79percent (business matters). For these needs, however, there was no significant difference when comparing married with never-married females. Interestingly the gender gaps are magnified for married men compared to never-married men.

⁴² Note no statistical difference was found for the gaps reported for married females, married males, and never-married males, when compared to never-married women.

Figure 16 | Gender Gap Heterogeneity across Marital Status: Married and Never Married, Men and Women



Note: Ordinary least squares estimates controlling for age, education level, and country fixed-effect. Comparison category: Female never married. Sample excludes widowed or divorced respondents. Gaps were

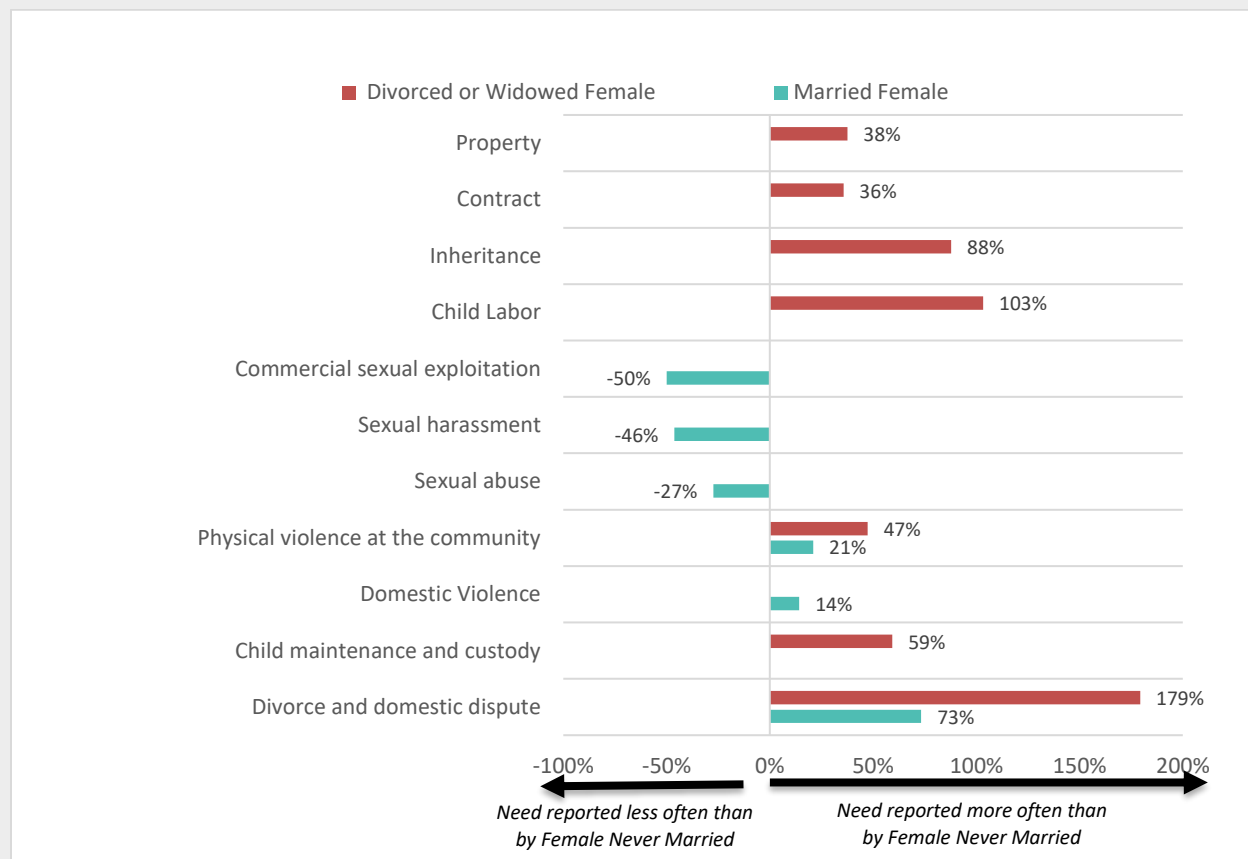
found significant at the 0.1 level. Reading example: commercial sexual exploitation is 47 percent less likely to arise as judicial need for the group of never married males than for never-married female.

Divorced and widowed women

Figure 16 displays OLS estimates of the coefficients in equation (3). The objective here is to focus the analysis on the specific needs expressed by widowed and divorced women, when compared to married and never-married women. Needs were compared for judicial services for women across the different marital status, relative

to the category of never married females. Here a bar toward the right means that the category included is more likely to report the corresponding judicial need than female never married. For example, divorced and widowed females are 88 percent more likely to report inheritance as judicial need than never-married women.

Figure 17 | Gender Gaps across Marital Status: Divorced or Widowed, Married and Never Married, Women Only



Note: Ordinary least squares estimates controlling for age, education level, and country fixed-effect. Comparison category: Female never married. Sample excludes male respondents. Gaps are significant at the 0.1 level. Reading example: divorced and widowed females are 88 percent more likely to report inheritance as a judicial need than never-married women.

Divorced or widowed women express specific needs. They are more likely to report the need for judicial services related to divorce and domestic dispute than never married (179 percent) and married females. They are more prone than never-married women to report judicial needs for grievances related to child labor (103 percent), inheritance (88 percent) and property (38 percent). For these needs, however, married and never-married women do not differ.

Widowed and divorced women equally report judicial need for protection from sexual abuse, sexual harassment, and commercial and sexual exploitation than never-married women. For intimate-partner violence, however, married

women report higher needs than never-married ones. Divorced and widowed females 47 percent more often report judicial needs related to physical violence at the community level than never-married ones.

Conclusion

This chapter explores gender gaps in judicial needs in the survey data collected in Cameroon, Ethiopia, Sierra Leone, and Zanzibar as well as Mauritania. Consistent with existing gender gaps in socioeconomic outcomes and gender-specific exposure to violence, female respondents are more prone to report need for judicial services related to family and human rights legal grievances, whereas men more often need services related to property rights, business, and labor issues.

Never-married women and widows and divorced women have distinct needs for certain types of judicial services, likely reflecting the unique vulnerabilities of their marital status. Never-

married women more frequently report judicial need for human-rights-related issues than married women. On the other hand, compared to currently married and never-married women, widows and divorced women report a more frequent need for judicial services related to domestic disputes, physical violence at the community level, child labor, inheritance, and property rights.

Strong disparity in judicial needs, such as documented in this report, should motivate tailored interventions that promote women's agency in SSA. In particular, the design of programs informing women about their rights and aiming to increase their access to judicial services should reflect specific needs.

A Way Forward to Justice for All and Conclusions

Underfunded justice systems exacerbate structural instability in society, inhibit investment, perpetuate conflict, and deepen a sense of depravation among women, the young, small business owners, and people living in poverty. However, rule of law reforms show potential to help courts deliver affordable, timely and quality services, particularly when policy interventions are built on good information and take account of local conditions.

Effective access to counsel, and affordable court costs or free services to settle dispute that allow fair, impartial, and enforceable solutions to legal problems are also key to promoting access to justice. Systematically addressing factors within formal justice systems that raise costs, discriminate against vulnerable groups, delay the resolution of disputes, or otherwise impede access, can promote sound policies that bring justice closer to the people. However, before the barriers to justice can be dismantled, causal relationships need to be identified and solutions tested so that reform measures help improve access to services rather than cause harm.

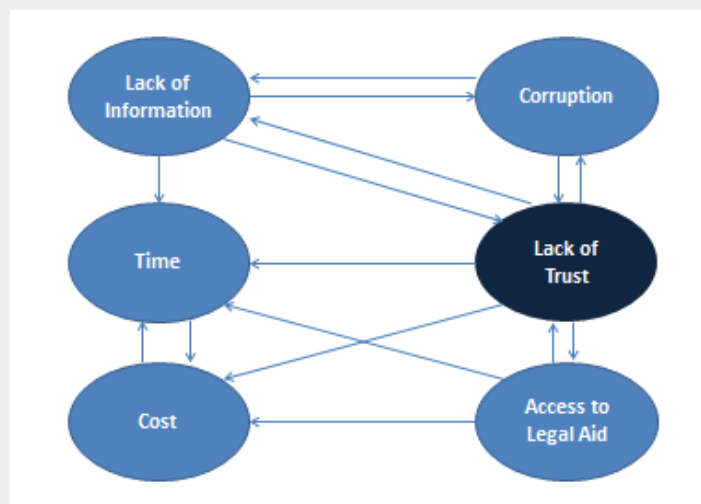
Alternative dispute resolutions have widened access to justice by lowering the cost of reaching settlements and making services available in locations far from urban centers.

Trust: The Foundation of Justice

Lack of trust in the judiciary is considered the leading barrier to the access to justice and is strongly related to other barriers, while corruption is the most direct cause for distrust in the judiciary. Lack of trust also results from lack of information.

Figure 18 presents the relationships between different barriers, as they all contribute toward the prevention of access to justice, these barriers are not independent of each other. In a nutshell, the barriers link to each other in a vicious cycle.

Figure 18 | Barrier to Barrier Relationships, Lack of Trust is the Leading Challenge for Formal Courts



Source: Authors

Situations where people must pay for information about their rights contribute to higher costs of proceedings and breed doubt about the fairness of judgement and decisions.

Improving staff discipline regimes to deter mistreatment of citizens and discrimination, especially of women and the poor, in contrast, can

give a sense of satisfaction to court users and build confidence in service delivery.

Lastly, lack of trust results from insufficient access to legal aid as an alternative to reduce the cost of judicial services. Effective access to legal aid can significantly improve access to justice and build trust.

Figure 19 | Barriers to Seeking Justice in Sub-Saharan-Africa



Source: Authors

However, the adoption and leveraging of strengthening measures can create a virtuous

circle when improving the ability to obtain justice helps build trust in institutions in the long term.

Reform Actions

Examples of good practices that many developing and developed countries have adopted to address the main sets of barriers of access to justice identified in this study, can offer useful lessons for policy makers.

International standards have long reflected the necessity of an independent judiciary with judges able to adjudicate cases free from any improper influences, interference, inducements or threats.

Systemic corruption is a serious barrier to effective access to justice in Sub-Saharan Africa. Police, court personnel, prosecutors and judges are often bribed to delay the filing, investigation, and resolution of cases. Lack of remuneration of judges and staff is an important consideration in many countries in Sub-Saharan Africa and has significant repercussions since the menace of corruption raises costs and delays the delivery of justice.

Tackling Corruption. A corrupt judiciary perverts the efficient course of justice because it harms public welfare, causes the improper and unfair delivery of judicial decisions, and denies individuals their fundamental right to a fair and impartial trial.

For example, lack of funding in Cote d'Ivoire seems to pave the way to corruption, as confirmed by Ivorian judges who have declared that "you need to have a sense of morality that is much higher than average to refuse bribes for cases that involve considerably high stakes, given that [judges] themselves struggle to cover their monthly expenses and that their remunerations is very low" (ONUCI, 2017) Other factors such as political affiliation, ethnic links, and social pressures are binding challenge in the fight against corruption.

The harm done by a corrupted judiciary on access to justice cannot be overstressed. By profoundly undermining public trust, judicial corruption

reinforces a perception of impunity, potentially resulting in individuals' resort to self-justice, the promotion of the legal interests of the rich over those of the poor, and ultimately social turmoil.

According to a Transparency International survey, 21 percent of the African population that has had contact with the judiciary admitted to having paid a bribe to a judicial official (Transparency International 2007). Various judiciaries have put in place policies to circumvent such practices. For instance, the government of Ghana has launched a commercial bank exclusively to prevent judicial officers from handling for court fees. Reviews of judicial salaries and benchmarking with other justice sector officials and the private sector are considered good practices to keep a relatively agile human resource system. Some jurisdictions are encouraging codes of ethics among judges and other justice sector stakeholders. Different methods used to combat corruption in justice sector institutions are discussed in Box 3.

Box 3

Anti-corruption in Sub-Saharan Africa Justice Sector Institutions¹

Corruption has direct and severe consequences on access to justice. Among them, poor and costly service delivery for citizens, weakening of the rule of law, and depletion of social and economic development. It is therefore necessary to understand justice sector corruption in Africa in all of its forms in order to appropriately address it.

Justice sector corruption is a function of three main factors. These include unorganized corruption that manifests itself through general disorder and lack of oversight and accountability mechanisms (mainly in fragile states and conflict zones); higher levels of organized corruption based on the direct involvement of political elites, e.g. political interference or undue influence; and lower levels of corruption that imply a mixture of petty corruption, incompetence and inefficiency due to archaic processes and low budgets. As a result of a systemic tendency, corruption is extremely hard to eradicate all the more so that all actors of the justice system are susceptible to it. Said actors range from policemen deciding whether to arrest and detain a suspect, to court staff processing a claim or handling files, prosecutors deciding to press charges, and judges reviewing a case and making a determination.

Various methods have been adopted to combat corruption depending on the type that affects a particular country. In countries that suffer from unorganized corruption, programs have been designed to strengthen justice sector institutions capacity (basic case management and filing systems, more transparent selection and hiring processes of judges and court staff, performance evaluations, enhanced training). In countries with high levels of corruption, measures have been adopted to: strengthen judicial independence; establish investigative and accountability entities (e.g. anti-corruption agencies) to oversee police, public prosecution, and judicial staff behavior; and reinforce legal and judicial information by publishing laws, judgements and statistics. Eventually, in countries with lower levels of corruption, efforts tend to set up training programs, support public information on judicial corruption, improve financial and human resources management as well as monitoring and evaluation.

¹ Adapted from World Bank. 2010. *Africa Regional Justice*. World Bank, Washington, DC. Note: A Review and Lessons Learned. World Bank, Washington, DC. 61–64.

Help Citizens to Know Their Rights. Improving information, eliminating discrimination and bias, and promoting gender parity in the judiciary requires priority attention of the call for justice for all by 2030 embodied in the 2015 Sustainable Development Goals is to be realized.

Citizens, especially the vulnerable segments of the population, who do not know their rights are more likely to be abused and mishandled by justice officials. Citizens who distrust their courts tend in effect to forego their rights on the assumption that they will not receive just decisions.

Lack of information is a binding constraint when it comes to access to justice by vulnerable groups. Domestic violence victims, small business owners who need to know their rights and where to file a complaint, young people in conflict with the law, and the poor person who wants to complain about mistreatment in the court. These groups are all disadvantaged by not knowing how to obtain justice or having clear information about how much it will cost in fees for court appearances and legal representation.

Better information is critical, both in official and local languages. Given the emergence of mobile technology, data collection and dissemination via through mobile phones could be a good way of disseminating citizen education about the law, and could serve as a check on judicial staff behavior if used as a channel to invite feedback on court services.

Studies have noted several reasons for citizens' hesitation to approach the court. Among them, a negative perception of the way the judiciary operates (Bingham Centre for the Rule of Law 2014), and cultural traditions stigmatizing segments of the population such as women, and reflective of a societal imbalance (United Nations General Assembly 1993). For instance, women's distrust in the judiciary is an extremely serious problem in gender-based violence cases—including honor crimes, genital mutilation, and rape—that tend to not get reported by fear of retaliation or exclusion from a community.

Therefore, eliminating discrimination and bias is necessary to increase trust and enhance access to justice. The inclusion of all races, ethnic groups and gender within the justice system empowers once disenfranchised populations, ensures the socioeconomic development of all, and ultimately increases a perception of legitimacy. Given its pivotal role in democratic governance, the judiciary must lead the way and reflect society as it is.

As governments worldwide seek to enhance public trust in their institutions through the inclusion of women candidates, various judiciaries across the globe have also pushed toward gender parity. However, while some courts do show higher rates of women on their bench (Greece and Serbia for instance) (CEPEJ 2012), women represent only about 27 percent of judges worldwide. Particularly, the percentage of female judges vary from less than 25 percent (Armenia, Azerbaijan, Japan, Nigeria, the Russian Federation, Tajikistan, Togo and the United Kingdom) to more than 75 percent (Jamaica, Latvia, Saint Kitts and Nevis, and Slovenia) (United Nations 2015). It is therefore of critical importance to keep promoting a gender-balanced judiciary and increase the representation of women.

Two main schools of thought exist as to why diversity on the bench is important. The first one suggests that women's representation on the bench is crucial because women judges' decisions tend to promote public policy objectives in favor of broader social gender equality.⁴³ The second school of thought supports the view that gender parity increases public confidence in the judiciary because gender-balanced courts better reflect of the composition of population as a whole. If women tend to render decisions in favor of equality for all, the public will be more confident in its judiciary's impartiality and fairness, and ultimately, in its legitimacy to interpret and enforce laws. In addition, studies have shown that gathering diverse perspectives improves performance (McKinsey & Company 2007).

Countries in Asia, North America, Europe, and Latin America have launched "diversity on the bench" campaigns which could offer useful lessons for African judiciaries. Such campaigns work on the premise women are more likely to be satisfied that they have had an opportunity to be heard, and as a result are more likely to resort to the courts.

Progress is slow, and women still remain largely underrepresented at the higher echelons of the judiciary globally.

Ensuring that the guardians of the law fairly represent society as a whole. This requires overcoming long-standing institutional biases of a male-dominated profession and selection process. Beyond this, traditional barriers that preclude women from accessing the workforce in general equally apply to their integrating the judiciary: limited access to education, prejudicial family roles, and a traditional division of labor that disadvantages women.

⁴³ Though a nuance shall be made with a dangerous conclusion that a judge's gender is a primary determinant in such judge's decision-making process. Therefore, the argument that men and women decide cases differently because of their gender shall be dismissed (Doherty 2012).

While reaching gender parity requires time, progress starts by educating women and men equally on the importance of a gender-balanced society and judiciary. Institutions such as judicial training institutes and governments, as well as law schools, and law firms have a responsibility. Efforts should be made to retain female talent as early as possible during law school and encourage the use of modern technology that enables women to balance family and work. Continuing women mentorship and the attitude that diversity is a currency that improves the judiciary's stature must be promoted by governments and judiciaries.

Cut Delays to Justice. Reducing time delays and improving geographic coverage of courts strengthens justice service delivery partly because citizens' perception of how long it takes to process a case often discourages them from lodging claims. Delays and chronic backlogs can cause basic human rights violations in addition to significant costs for citizens and courts. In reaction, countries around the globe, including in Africa, have initiated improvement programs that could be adapted to Sub-Saharan Africa.

Reasons for delays in justice include a shortage of qualified judges, prosecutors and police, and their scarcity outside of urban areas. Lack of resources and infrastructure, overly complex procedures, and the corrupt practices described above also deter court staff, judges, and police from adequately pursuing their duties.

Lack of judges and appropriate training. The lack of judges has historically been the main reason for delay (National Center for State Courts 1987). Low salaries, difficult working conditions, and general insecurity have caused a high percentage of judges across to resign. In 2010, the ratio of judges to people in Africa was excessively low, with about 1 judge for 100,000 inhabitants (World Bank 2010). compared to a European average of 21 (CEPEJ 2016) and a Latin American average of 8 (World Bank 2011). Lack of training is also reflected in severe judicial inefficiency and poor case flow management. Ghana and Tanzania among others have pushed for new faculties of law

in public university and training institutes⁴⁴ while encouraging the private sector to training lawyers and judges.

Lack of technology and physical infrastructure. The absence of modern tools such as electronic filing systems prevents judges and court staff from appropriately fulfilling their duties. Automation of court notification services and the reduction of hard-copy paperwork for criminal and civil procedures seem necessary. In Rwanda, the government introduced an electronic case management system in 2017 for judges and lawyers to complement an electronic filing system implemented in 2013. In 2012, Kenya also introduced a case management system designed to increase the efficiency and cost-effectiveness of commercial dispute resolution (World Bank 2017). In 2019, Tanzania introduced integrated justice centers (one stop shop of citizen centric justice services) with JSDS II case tracking system to increase case processing and help monitor the performance of magistrates. In Europe, Portugal has made a significant investment in modern tools in a policy centered on electronic payment platforms and electronic filing of civil cases.

Overly complex procedures. To further decrease courts' caseload and eliminate backlog and delays, governments have pushed for alternatives to the courtroom for settling disputes in matters such as labor and family law. Simplified procedures are encouraged through the creation of fast track courts to deal with cases of limited value and other specialized divisions within existing courts. An initiative in the South African Justice Department started in 2006 reduced court backlogs and speed up cases by setting up to 50 high-priority backlog courts, some of which were made to permanent. In 2015, justice officials and Legal Aid South Africa reported backlog courts improved management of the flow of cases.⁴⁵

Importantly, those steps should be combined with the introduction of procedural law changes. In Ghana, in addition to creating specialized

⁴⁴ The Institute for Judicial Administration in Tanzania is among the most well-regarded training institute in Africa, more information at <http://www.ija.ac.tz/#>

⁴⁵ See National Assembly Question for Written Reply Parliamentary Question No: 2344, Ms. Marchesi (DA) to ask the Minister of Justice: "(a) What detailed measures have been put in place to address the 18,7% increase in the backlog of the number of cases at the National Prosecuting Authority in the 2015–16 financial year [...] "During 2015/16, there were 27 approved regional and 25 district backlog courts. The district backlog courts excelled during 2015/16 by finalising a total of 14,711 cases comprising 10,525 verdict cases with a conviction rate of 95.3% and 4 186 ADRM cases. This represents a finalisation rate of 3.8 cases per court, per day. The regional backlog courts finalised a total of 2,421 cases comprising 2,363 verdict cases with a conviction rate of 75.2% and 58 ADRM cases. This represents a finalisation rate of 0.6 cases per court, per day. The increase number of trials finalised in the high court had a positive impact on the reduction of percentage backlog cases, from 26.4% during 2014/15 to 21.3% in 2015/16."

divisions,⁴⁶ the Justice Department established a mandatory pretrial settlement process in the country's commercial court that has stopped cases having go to trial. Another example in Europe, France's Justice Ministry launched a divorce procedure in 2017⁴⁷ whereby parties no longer have to go before a judge so long as their agreement is recorded by lawyers and certified by a bailiff.

Long distance from formal courts. Courts remain remote for a majority of African citizens. Long distances between villages and courts, travel costs, and lack of proper information on legal options likely discourage rural people from lodging

complaints on the assumption that "delays and postponements mean repeated trips to [court] every month, perhaps just to find out that it is not meeting" (Meschievitz and Galanter 1982). In 2019, the Judiciary of Tanzania has established mobile courts (Justice-on-wheels) to bring court services t closer to the people where they live and work.. The Democratic Republic of the Congo has established temporary courts within the formal justice system that operate for limited periods in isolated areas. Funded by local and international NGOs, such courts have helped facilitate over 1,000 rape trials since their inception in 2008.⁴⁸ Judges, defense lawyers, and other justice sector professionals have received training.

Support for Alternatives to Courts

Promotion of alternative dispute mechanisms can cut both delays and costs. Traditional justice systems in Africa cater to about 80 percent of the population, Formal alternatives for dispute resolution to appearing in court—both court-annexed and community-based—bridge the gap between the formal justice system.

Typically, alternatives for dispute resolution encompasses arbitration, mediation, conciliation, and negotiation mechanisms. Alternatives have speed up case management, saved scarce judicial resources, and cut high costs in saturated court systems. For example, mandatory mediation is courts is helping cut delays and unburdening the court docket. Studies estimate the total savings to users range between 3 and 50 percent.⁴⁹ In the case of Africa, use of alternative dispute mechanisms is gaining support.

Court annexed mediation centers offer attractive prospects to litigants wanting to play an active role

in resolving their disputes. This flexible mechanism allows parties to tailor a procedure uniquely suited to the settle disputes. Nongovernment organizations, other justice sector entities, and community organizations also offer mediation services outside the court system that reduce the costs of representation, eliminate court fees, and reduce delays. Their role is especially potent when the judicial system fails to serve its users adequately—in the event of case backlog impeding proper functioning of the court system complex procedures taking too many judiciary resources—and for litigants who cannot afford the court system, are illiterate, or are unable to reach courts far from their homes.

Figure 20 compares the results with those of traditional litigation and illustrates the benefits of alternative dispute mechanisms:⁵⁰

⁴⁶ Including the Fast Track Division of the High Court, the Land Court, the Financial and Economic Crimes Court, the Industrial Court and the Human Rights Court.

⁴⁷ Law no. 2016–1547 of 18 November 2016 on the modernization of justice in the twenty-first century, OJ 19 November 2016, Art. 50 para. 1 "Divorce by mutual consent by a deed under private signature countersigned by lawyers, deposited at the rank of minutes of a notary."

⁴⁸ See M. Maya "Mobile Courts in the Democratic Republic of Congo: Complementarity in Action?" American Bar Association Rule of Law Initiative, "Mobile court trials are often held under a tent, with scores of rapt villagers attending the trial for hours at a time without the comfort of shade, food or water. For most villagers, this is the first time they have seen a judge or lawyer. Few if any have ever observed a trial, with many unaware that a soldier, commander or other combatant can be held accountable for their misdeeds; in fact, the news that the accused do not enjoy impunity comes as a great surprise to many villagers, although public education campaigns and word of mouth are slowly dispelling this noxious myth." https://worldjusticeproject.org/sites/default/files/mobile_courts_in_the_democratic_republic_of_congo_maya.pdf

⁴⁹ Cited in Love (2011).

⁵⁰ See Paths to Justice: What people do and think about going to law, by Hazel Genn (1999)

. fn. 3, at p. 8, adapted from Frank Sander and Stephen Goldbert "fitting the forum to the fuss: a user-friendly guide to selecting an ADR procedure", Negotiation Journal, January 1994, 49–68.

Figure 20 | Alternative Dispute Resolution versus the Courtroom

Disputant's Goals	ADR Procedures			Court Procedure
	Mediation/ Conciliation	Non-Binding Arbitration	Binding Arbitration	Adjudication
Minimize Costs	3	2	1	0
Resolve Quickly	2	2	3	0
Maintain Privacy	2	2	2	0
Maintain Relationships	3	2	1	0
Involve Constituencies	3	1	1	0
Link Issues	3	1	1	0
Get Neutral Opinion	0	3	3	3
Set Precedent	0	0	1	3

Source: Hazel Genn (1999)

Key: 3 = highly like to satisfy goal; 2 = likely to satisfy goal; 1 = unlikely to satisfy goal; 0 = highly unlikely to satisfy goal.

Note: ADR = Alternative dispute resolution.

In Ghana, mediation weeks are held regularly. For example, in one such exercise in 2003 there were resolution of 300 pending court cases in just about 5 days and about 90 percent of surveyed users expressed their satisfaction with the process. Furthermore, 155 commercial and family cases were included in the mediation exercise in 2007, of which about 100 cases were fully mediated or concluded in settlements agreements, while 37 were taken back to court.⁵¹

In West Africa, community and professional associations are offering dispute settlement services, and about 16 regional and local centers and over 65 law firms provide them too (Sutherland and Sezneck 2003). Tanzania has set up court annexed mediation and plans to expand to provide swift and cost-effective justice. It is also setting up mobile courts to bring justice services closer to the people, especially the poor and vulnerable segments of the population in rural and peri-urban areas.

⁵¹ See Uwazie, E. (1988), op. cit. footnote No. 4, at p. 3.

Information Plays a Critical Role

Lack of information is a binding constraint when it comes to access to justice for vulnerable groups, such as domestic violence victims or small business owners who need to know their rights and where to file a complaint.

Publicly accessible information is crucial and helps increase confidence in judges, court personnel and government. However, it is essential for upholding the rule of law and maintaining good democratic governance.

It is important to keep in mind that publicly accessible information is crucial and helps increase confidence in judges, court personnel, and

government. Today, data on court fees in SSA remain somewhat difficult to find and may be unreliable in some countries. Public availability of court fees data, however, is essential for upholding the rule of law and maintaining good democratic governance.

Assessment of official information is essential for evaluating progress in court performance and planning for new reforms. In addition, rationalization of court fees such as filing fees, initiation of an appeal fees, copying and translations, official certification fees, and expert witness and witness costs directly enhances justice access.

Court Costs Need to Fall

The study indicates that effective access to justice is not easily achievable in SSA due to high costs.

Research suggests the high cost of pursuing legal redress through courts, including the cost of obligatory legal representation, increases judicial inequity by giving significantly greater advantage to parties that can afford access to courts and adequate legal representation.

One major component of the cost of justice issue is the court fees that are charged to users, namely the out-of-pocket costs that litigants incur for the judicial administration of their case. Specifically, court fees represent the costs to adjudicate a case and operate the court. Those costs are passed on to parties, and, depending on the country's legislation, will either be split between them, or paid in whole by the losing party. A comparative look of court costs from different legal traditions provided ahead, indicates a large variation across national jurisdictions. To illustrate these variations, eight countries were selected for

analysis because of the contrast in their legal systems and development: France, Cote d'Ivoire, Gabon, Singapore, the United Kingdom, and the United States. The analysis is shown in Appendix C.

The results show that lower income countries such as Gabon and Cote d'Ivoire still struggle to improve the structure of their judiciary, and as a result suffer from relatively high court fees. However, in high-income countries as in lower-income countries, individuals' right to access justice might be foregone in the face of high court fees. In the words of the Brookings Task Force on Civil Justice Reform, "high transaction costs – manifested in high out-of-pocket legal fees and the time consumed by delay- are the enemies of justice" (Brookings Institution 1989). The public will therefore prefer to forego their judicial recourse when faced with the monetary investment that seeking justice represents.

Well-funded legal aid guarantees citizen rights

The right to free legal assistance is fundamental to a well-functioning judiciary because it prevents access to justice from depending on financial means.

Legal aid is the free or subsidized provision of legal services to citizens who could not otherwise afford them and offered to guarantee their access to justice (Danish Institute for Human Rights 2011).

It generally encompasses two distinct judicial mechanisms: the right to access the law (information and advice, negotiation or mediation) and the right to assert legal rights (litigation). Legal aid schemes ensure equality before the law, the right to counsel, and the right to a fair trial. Through the provision of assistance to those in need, it is observed that legal aid contributes to minimizing overall legal expenditures by reducing

the length of police detentions, judicial procedures and therefore congestion in the courts, prison overcrowding, and ultimately government spending.

In addition to ensuring access to justice for all, legal assistance to the poor generates substantial economic benefits. By the same token, it is also important to stress the connection between legal aid and the creation of jobs. A survey of legal aid in developed countries, shown in Appendix D, suggests a growing number of legal aid providers, centers, and organizations will result in better

outreach, extended services to citizens, and extensive legal training. By contrast, surveys show that reducing legal aid funding results in significant decline in jobs.⁵²

Although these findings are in a developed country setting it has a useful message for developing countries as well who strive to improve social and economic wellbeing of its citizens and improve economic outcomes. The importance of legal aid for a more effective justice system cannot be overstressed in view of the above noted factors.

Strong Institutions Lead the Way

Courts in the surveyed countries appear to be failing to provide justice for all. Lack of resources entrenches a culture of impunity that makes legal redress the privilege of the rich. Vulnerable groups are more often than not excluded because justice services are unaffordable or out of reach in other ways.

Yet this survey of the legal systems of Cameroon, Ethiopia, Sierra Leone, and Zanzibar shows some albeit limited successes in promoting the rule of law and strengthening institutional capacity. Examples from this study of good practices and institutional changes, in the context of the complexity of legal systems based in the legacy of colonial law and customary dispute resolutions, offer useful lessons for policy makers.

In Tanzania, a judiciary-led effort, supported by the World Bank, was successful in improving court services to citizens and enhancing their confidence in the system by more than 17 percent, between 2016 and 2021. This was possible through the design and implementation of integrated justice centers across the country that met Juditecture standards for improved service provision to citizens and businesses. This has included the setup of a dedicated integrated justice center in Dar es Salaam (Temeke) for addressing women's access to justice needs. In addition, mobile courts (specialized vehicles with technology, and solar panels) have been launched to bring justice closer to the people, in urban and rural areas. Furthermore, gender gap has been narrowed in the judiciary, staff have been skilled, performance

standards introduced, and e-services expanded to all parts of the country.⁵³

Expansion of mobile court services in peri-urban and rural areas can help reduce legal costs. Where distance from formal courts limits people's access, mobile "justice on wheels" programs can significantly improve vulnerable groups' ability to seek justice. The mobile services cut their travel time and transportation cost to seek protections under the law in court. As noted above, initiation of mobile court services in Tanzania has enhanced access to justice of thousands of people, since their launch in 2019.

The development of legal aid is paramount to ensuring the rule of law. Legal assistance to the poor can also generate substantial economic benefits for private citizens and for the state as it reduces public costs and encourages the creation of jobs.

⁵² See for instance an Legal Services Corporation (LSC) survey showing that between December 2010 and 2012, budget cuts led to significant layoffs, the LSC grantees totaling a loss of 1,226 full-time employees at the Conference of Chief Justices of the state Supreme Courts, "The Importance of Funding for the Legal Services Corporation from the Perspective of the Conference of Chief Justices and The Conference of State Court Administrators." http://cci.ncsc.org/~media/Microsites/Files/CCJ/Web%20Documents/LSC_WHTPR.ashx

⁵³ Tanzania Citizen-centric Judicial Modernization and Justice Service Delivery (P155729) received World Bank Vice President Award in 2020 for its achievements and results.

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Appendix A. Methodology of gender and marital status analysis

Statistical Correlation Between Barriers of Access to Justice Presented in Chapter 7

The Spearman rank-order correlation coefficient was utilized to shed light on the factors that most influence access to justice given the variables used to measure access to justice and the different barriers are ordinal. The Spearman rank-order correlation test is a nonparametric test which measures the strength and direction of the monotonic relation between two variables that are measured on an ordinal or continuous scale. A monotonic relationship is a relationship that does one of the following: (1) as the value of one variable increases, so does the value of the other variable; or (2) as the value of one variable increases, the other variable value decreases. One of the advantages of the Spearman test is that it makes it possible to test the existence of a linear or non-linear relationship between two variables. Indeed, a monotonic relationship can be either linear or nonlinear. As it is a nonparametric test, no assumption is needed for the distribution of the variables of interest.

For a sample of size n and 2 variables X and Y , the Spearman coefficient is given by:

$$r = 1 - \frac{6 \sum d_i^2}{n(n^2 - 1)}$$

Where d_i is the difference between the two ranks of each observation. The spearman coefficient lies between -1 and 1.

The team calculated the spearman coefficient between access to justice and different barriers, namely:

- Distance to courts
 - Lack of legal information on rights and the operation of the justice system
 - Expensive nature of hiring the services of a lawyer
 - Absence or limited accessibility of legal aid services
 - High cost related to reporting and filing a case
 - Incompetence of court and law enforcement officials
 - Prolonged process and delay in the delivery of justice
 - Lack of trust in the official judicial system
 - Prevalence of corruption,
 - Complex, unfriendly and intimidating procedures,
 - Poor quality of outcome and process,
 - Cultural and linguistic barriers, and
 - Gender bias and discrimination by justice sector officials.
- Figure A.1 Correlation between Access to Justice and Different Barriers in Selected Countries

Figure A1a Barriers Influencing Access to Formal Courts in Ethiopia

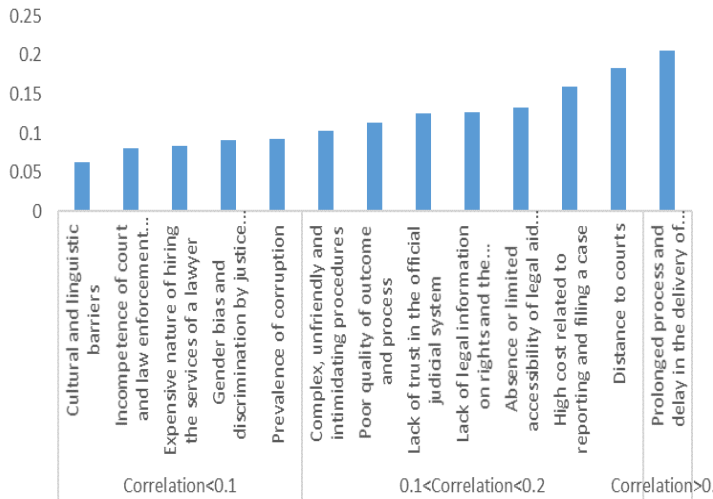


Figure A1b Barriers Influencing Access to Formal Courts in Sierra Leone

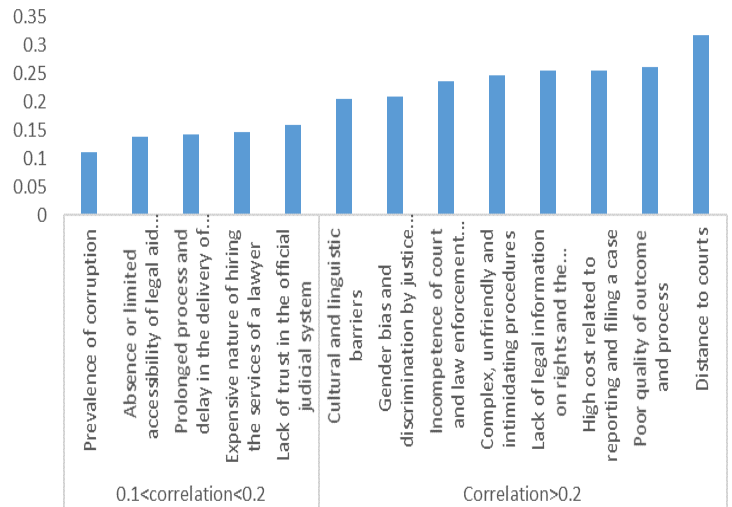


Figure A1c. Barriers influencing access to formal courts in Cameroon

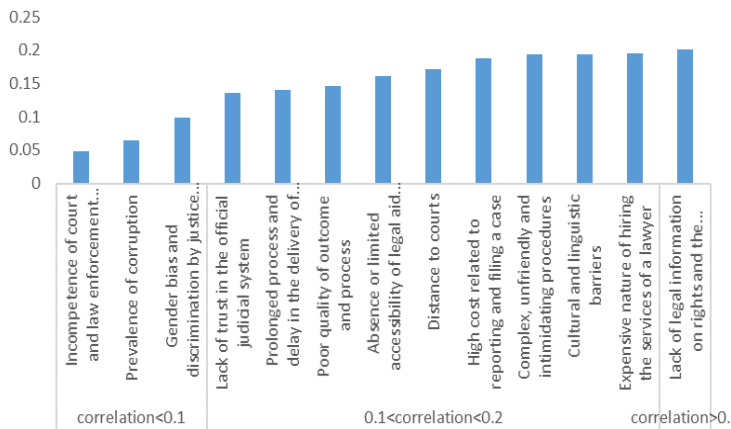


Figure A1d. Barriers influencing access to Formal Courts in Zanzibar

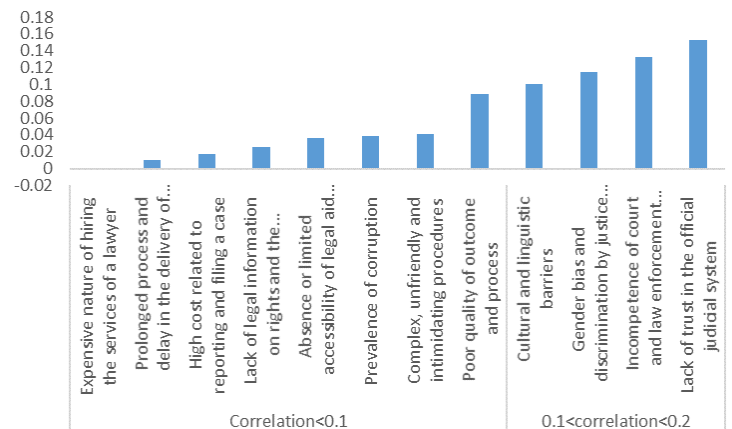


Figure A1e Barriers Influencing Access to Law Enforcement Agencies in Ethiopia

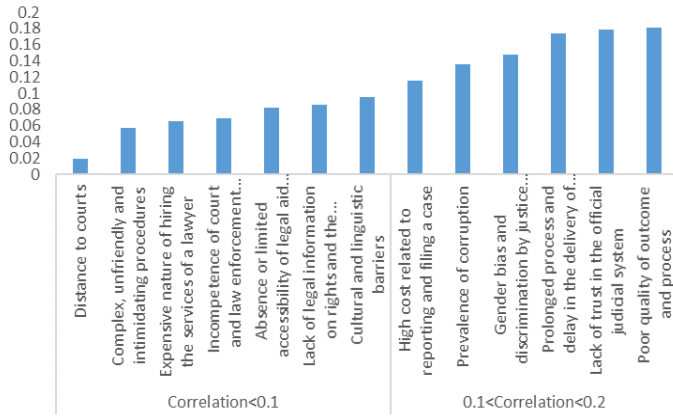


Figure A1g Barriers influencing Access to Law Enforcement Agencies in Sierra Leone

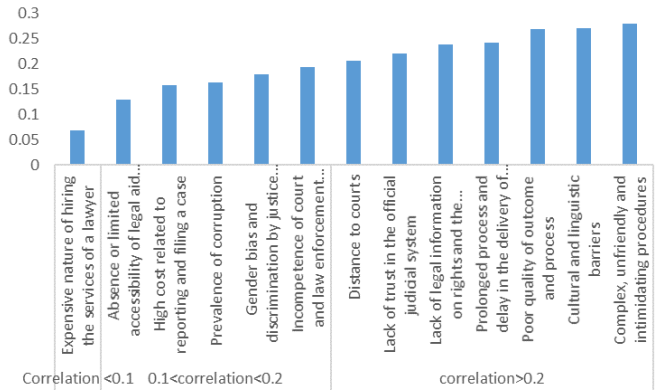


Figure A1g Barriers Influencing Access to Law Enforcement Agencies in Cameroon

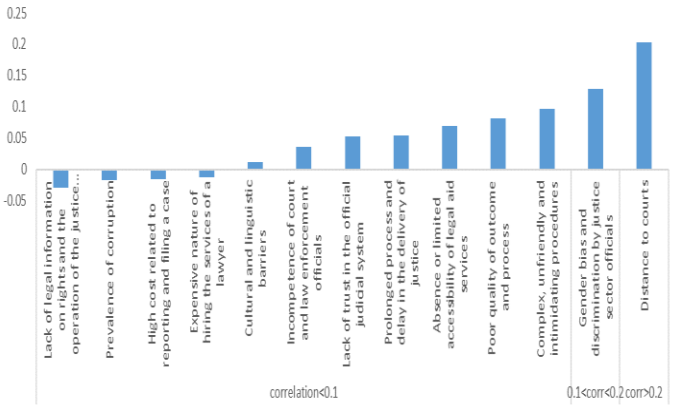
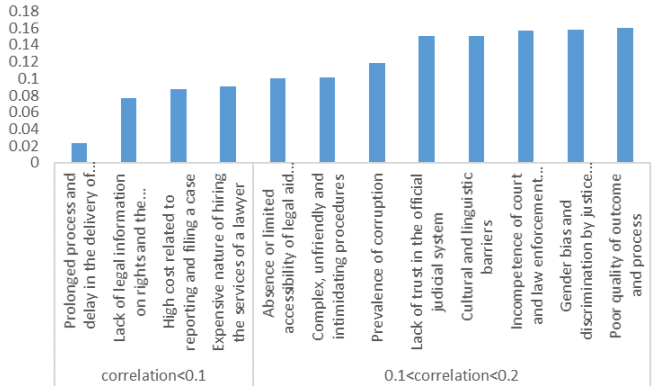


Figure A1h Barriers Influencing Access to Law Enforcement Agencies in Zanzibar



Source: Authors Analysis

The results show that in Ethiopia, the various factors identified have a significant correlation with access to formal courts. Prolonged processes and delay in the delivery of justice, distance to courts, high cost related to reporting and filing a case are the most influential factors. In access to law enforcement agencies, poor quality of outcome and process, lack of trust in the official judicial system, and prolonged processes and delay in the delivery of justice are the three most relevant barriers. Distance is not correlated with access to law enforcement agencies.

In Sierra Leone, the most important barriers to access to formal courts are distance to courts, poor quality of outcome and process, and high costs related to reporting and filing a case. Moreover, access to law enforcement agencies is mainly hampered by complex, unfriendly, and intimidating procedures, cultural and linguistic barriers, poor quality of processes and outcomes, prolonged processes and delay in the delivery of justice. Access to law enforcement agencies is not correlated with the expensive nature of hiring the services of a lawyer.

In Cameroon, incompetence of court and law enforcement officials is not significant in explaining access to formal justice courts. Alternatively, lack of legal information on rights and the operation of the justice system and the expensive nature of hiring the services of a lawyer are the most correlated barriers to access to formal courts. Distance to courts; absence or limited accessibility of legal aid services; complex, unfriendly, and intimidating procedures; poor quality of outcome and process; gender bias and discrimination by justice sector officials are the only barriers correlated to access to law enforcement agencies.

In Zanzibar, only incompetence of court and law enforcement officials, prolonged process and delay in the delivery of justice, lack of trust in the official judicial system, cultural and linguistic barriers, gender bias and discrimination by justice sector officials are significant in explaining access to formal courts. Poor quality of outcome and process, gender bias and discrimination by justice sector officials, incompetence of court and law enforcement officials are the most important barriers correlated to access to law enforcement agencies.

Figure A.2 Correlation between Access to Justice and Different Barriers for Sub-Saharan Africa (4 countries together)

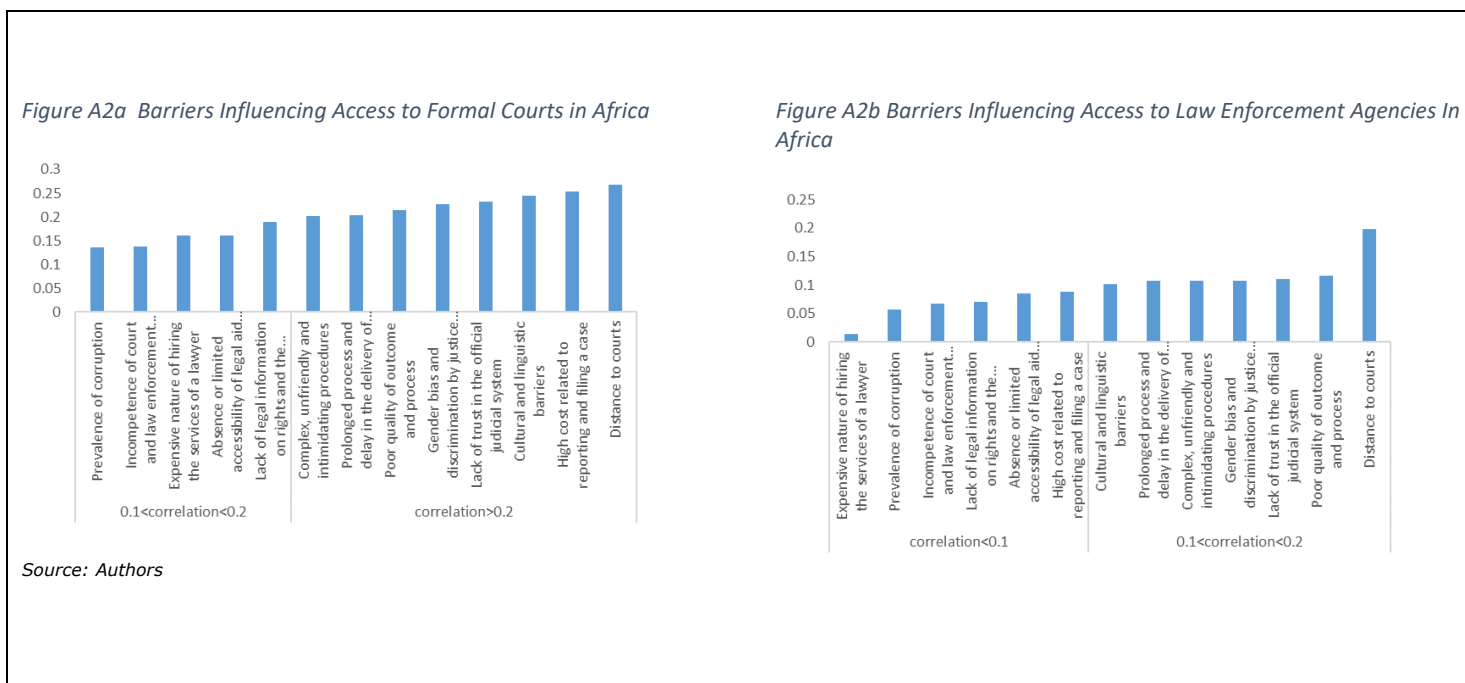
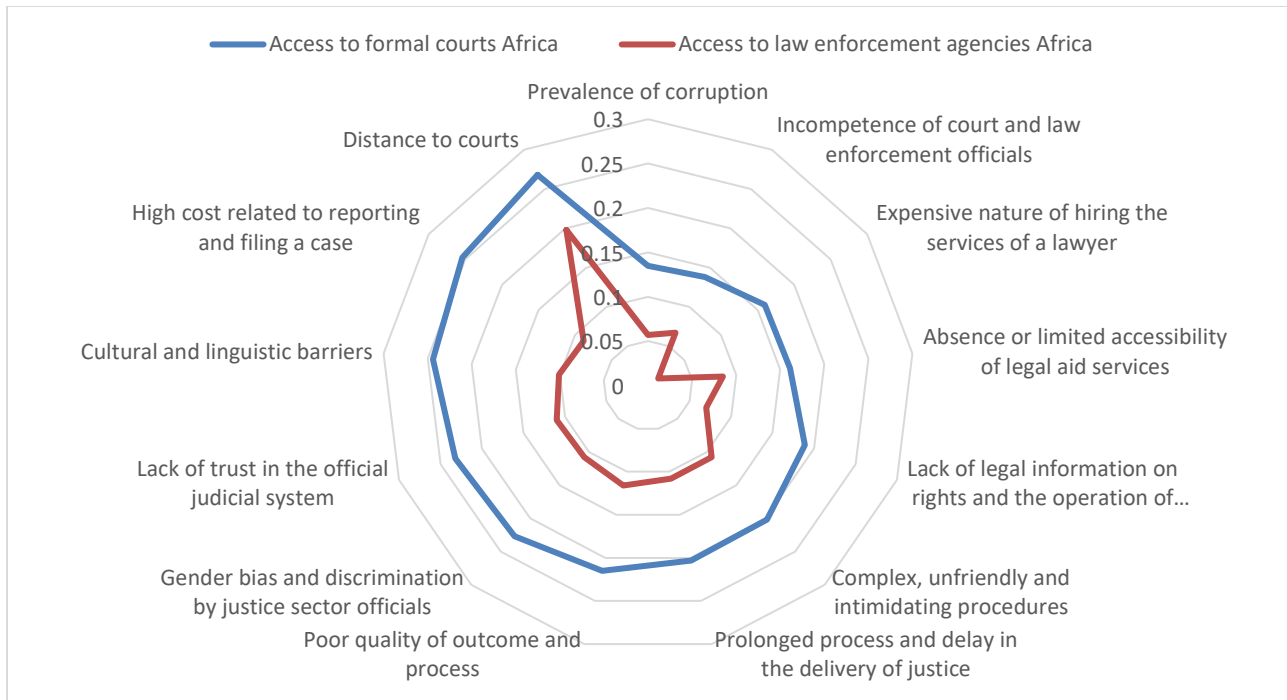


Figure A.3 Barriers Influencing Access to Formal Courts and Law Enforcement Agencies in Africa



Source: Authors

Results show that the different barriers are correlated with access to formal courts and access to law enforcement agencies in Africa with the exception of the expensive nature of hiring the services of a lawyer which does not affect access to law enforcement agencies.

Distance to courts, high cost related to reporting and filing a case, and cultural and linguistic barriers are the most relevant factors that influence access to formal courts in Africa. Concerning access to law enforcement agencies, distance to courts, poor quality of outcome and process, and lack of trust in the judicial system are the most correlated barriers. The various barriers identified are more correlated with access to formal courts than access to law enforcement agencies.

Table A.1: Correlation between Access to Justice and Different Barriers in Selected Countries

Countries	Ethiopia		Sierra Leone		Cameroon		Zanzibar (Tanzania)	
	Access to formal courts	Access to law enforcement agencies	Access to formal courts	Access to law enforcement agencies	Access to formal courts	Access to law enforcement agencies	Access to formal courts	Access to law enforcement agencies
Distance to courts	0.183 ^a	0.019	0.316 ^a	0.206 ^a	0.171 ^a	0.203 ^a	-	-
Lack of legal information on rights and the operation of the justice system	0.127 ^a	0.086 ^a	0.254 ^a	0.238 ^a	0.201 ^a ₁	-0.030	0.026	0.077
Expensive nature of hiring the services of a lawyer	0.084 ^a	0.066 ^a	0.146 ^a	0.068	0.195 ^a	-0.013	-0.001	0.091
Absence or limited accessibility of legal aid services	0.133 ^a	0.082 ^a	0.138 ^a	0.128 ^a	0.161 ^a	0.069 ^a	0.036	0.100 ¹
High cost related to reporting and filing a case	0.159 ^a	0.115 ^a	0.255 ^a	0.158 ^a	0.188 ^a	-0.015	0.017	0.087
Incompetence of court and law enforcement officials	0.081 ^a	0.069 ^a	0.236 ^a	0.193 ^a	0.049	0.036	0.133 ^a	0.157 ^a
Prolonged process and delay in the delivery of justice	0.206 ^a	0.174 ^a	0.143 ^a	0.241 ^a	0.140 ^a	0.054	0.010 ^a	0.023
Lack of trust in the official judicial system	0.126 ^a	0.179 ^a	0.159 ^a	0.220 ^a	0.136 ^a	0.052	0.153 ^a	0.151 ^a
Prevalence of corruption	0.093 ^a	0.136 ^a	0.111 ^a	0.162 ^a	0.064 ^a	-0.017	0.039	0.119 ^a
Complex, unfriendly and intimidating procedures	0.104 ^a	0.0570 ^a	0.246 ^a	0.279 ^a	0.194 ^a	0.096 ^a	0.041	0.101 ^a
Poor quality of outcome and process	0.114 ^a	0.181 ^a	0.260 ^a	0.268 ^a	0.147 ^a	0.081 ^a	0.088	0.160 ^a
Cultural and linguistic barriers	0.063 ^a	0.095 ^a	0.205 ^a	0.269 ^a	0.194 ^a	0.011	0.101 ^a	0.151 ^a
Gender bias and discrimination by justice sector officials	0.091 ^a	0.148 ^a	0.209 ^a	0.179 ^a	0.099 ^a	0.129 ^a	0.115 ^a	0.158 ^a

^aSignificant at 5 percent level

Table A.2 Correlation between Access to Justice and Different Barriers for Africa (4 countries together)

	Access to formal courts	Access to law enforcement agencies
Distance to courts	0.268 ^a	0.198 ^a
Lack of legal information on rights and the operation of the justice system	0.189 ^a	0.07 ^a
Expensive nature of hiring the services of a lawyer	0.16 ^a	0.014
Absence or limited accessibility of legal aid services	0.161 ^a	0.085 ^a
High cost related to reporting and filing a case	0.254 ^a	0.088 ^a
Incompetence of court and law enforcement officials	0.138 ^a	0.067 ^a
Prolonged process and delay in the delivery of justice	0.203 ^a	0.108 ^a
Lack of trust in the official judicial system	0.232 ^a	0.110 ^a
Prevalence of corruption	0.135 ^a	0.057 ^a
Complex, unfriendly and intimidating procedures	0.202 ^a	0.108 ^a
Poor quality of outcome and process	0.215 ^a	0.116 ^a
Cultural and linguistic barriers	0.244 ^a	0.101 ^a
Gender bias and discrimination by justice sector officials	0.227 ^a	0.108 ^a

Source:

^aSignificant at 5 percent level

Appendix B. Questionnaire

Voices of the Vulnerable for Access to Justice in SSA		
Household Survey Questionnaire		
I. Questionnaire Identification		
Sub-city:		
Kabele:		
House No.		
Questionnaire ID No.		
Name of Interviewer:		
Name of Supervisor		
Category of Respondent (Circle category without asking the respondent)	1. Women	4. Young offender
	2. Youth	5. Victim of Violence
	3. Housemaid	6. Informal Trader
II. Introduction:		
Dear interviewee, this survey instrument is prepared to assess the situation of access to justice with respect to vulnerable groups, especially women and the youth. It also aims at understanding the experience and voices of these groups on access to justice through formal and non-formal justice mechanisms. Your identity will remain confidential. Thank you in advance for your time.		
i. Background		
1. Sex:	1. Male	
	2. Female	
2. Age:		
3. Marital Status:	1. Never Married	3. Divorced
	2. Married	4. Widowed
4. Education Level attained by respondent	1. Non literate	4. Primary second cycle (5-8)
	2. Read and write	5. Secondary school (including 10+2)
	3. Primary first cycle (1-4)	6. College diploma or above
i. Perceptions and situation of access to justice by vulnerable groups:		
This section deals with such issues as identification of vulnerable groups' justice needs, degree of access to justice, and perception on major barriers and costs of access and quality of justice process and outcome.		
5. Have the following legal issues and grievances ever arisen as justice needs of you or your household? [Interviewer: Please read items one at a time]		
Legal Issues and Grievances		1= Yes, 2= No

5.1 Divorce and domestic dispute		
5.2 Child maintenance and custody		
5.3 Inheritance		
5.4 Contract		
5.5 Labor issues		
5.6 Damages and other monetary claims		
5.7 Property including land use and related housing and ownership rights		
5.8 Business matters related to licensing, supplies, taxation etc.		
5.9 Domestic violence		
5.10 Physical violence at the community level		
5.11 Sexual abuse (including rape and abduction)		
5.12 Sexual harassment (at work, in schools and other places)		
5.13 Bullying		
5.14 Corporal punishment at home or in schools		
5.15 Trafficking in women and children		
5.16 Commercial sexual exploitation (such as prostitution)		
5.17 Child labour		
5.18 Unlawful arrest and detention		
5.19 Abuse of power including corruption		
6. How accessible do you think are the following justice institutions to you and your family?		
Justice Institution	1= Very difficult	4= Easy
	2= Difficult	5=Very Easy
	3= Moderate	999= Don't know
6.1 Formal courts		
6.2 Shari'a Courts		
6.3 Law enforcement agencies (police and public prosecution)		
6.4 Social courts		
7. Please rate the following in terms of their seriousness as barriers for you or members of your household to have access to formal justice mechanisms.		
Barriers	1= Serious barrier,	2= Somehow a barrier,
	3= Not a barrier at all	
7.1 Partiality of personnel		
7.2 Lack of legal information on rights and the operation of the justice system		
7.3 Expensive nature of hiring the service of a lawyer		
7.4 Absence or limited accessibility of legal aid services		
7.5 High cost related to reporting and filing a case (court fee, secretarial and transportation expenses)		
7.6 Incompetence of court and law enforcement officials		
7.7 Prolonged process and delay in the delivery of justice		
7.8 Lack of trust in the official judicial system		

7.9 Prevalence of corruption	
7.10 Complex, unfriendly and intimidating procedures	
7.11 Poor quality of outcome and process	
7.12 Cultural and linguistic barriers	
7.13 Gender bias & discrimination by justice sector officials (including double victimization)	
8. How often do you and members of your household resort to the use of alternative and traditional justice mechanisms?	
1= Never, 2= Seldom, 3= Sometimes, 4= Usually, 5= Always	
9. Please rate the following in terms of their seriousness as barriers for you or members of your household to utilize non-formal justice mechanisms	1= Serious barrier, 2= Somehow a barrier, 3= Not a barrier at all
9.1 Partiality of personnel	
9.2 Limited capacity of personnel	
9.3 Gender bias and discrimination by personnel	
9.4 Unpredictable outcome	
9.5 Weak execution of decisions	
9.6 Prolonged process and delay in the delivery of justice	
10. To what extent do you agree with the following statements?	1 = Strongly disagree, 2 = Disagree, 3 = Neither agree nor disagree, 4 = Agree, 5 = Strongly agree
10.1 The justice system works only for the rich and the powerful	
10.2 There are improvements in the accessibility of the court system in the past few years	
11. In your opinion, how often does the Ethiopian Formal Justice System deliver?	1= Never, 2= Seldom, 3= Sometimes, 4= Usually, 5= Always
11.1 Affordable service	
11.2 Timely service	
11.3 Quality service	
i. Legal Information and Legal Aid	
This section covers issues of accessibility of legal information and legal aid	
12. How do you evaluate the level of your awareness and knowledge of:	1 = Very poor, 2 = Poor, 3= Moderate, 4 = High 5 = Very high
12.1 Your legal rights	
12.2 Laws of the land	
12.3 The working of the legal system	
12.4 Available legal aid services	

13. How do you rate the availability of legal information on the above in your community?	
1= Very high, 2 = High, 3 = Medium, 4 = Poor, 5 = Very poor	
14. To what extent have the following served you as sources of legal information?	1= Never, 2= Seldom, 3= Sometimes, 4= Usually, 5= Always
14.1 Personal contacts (family, friends, neighbors, etc.)	
14.2 Professional lawyers	
14.3 Community outreach programs (community conversations, marches etc)	
14.4 Print and electronic media (radio, TV, internet, leaflets, posters, billboards)	
14.5 Awareness raising workshops and programs	
15. How do you rate the availability of free legal aid service in your community?	
1= Very high, 2 = High, 3 = Medium, 4 = Poor, 5 = Very poor	

Appendix C. Comparative Analysis of Court Fee Systems

United States—Under federalism, the federal and state governments each have their own court systems and structures. Each state court fixes its own court fees and publishes a detailed schedule online, meaning these costs may vary not only from one state to another, but also from one state *court* to another. For instance, unlike Illinois’ Cook County Circuit Court, that charges uniform court fees (the fees are the same whether it is an adoption case or a probate case), Illinois’ Lake County Circuit Court charges different fees depending on the nature of the case. Further, the amount of court fees differs from one same-state court to another. For example, the fee for a jury demand in Lake County amounts to \$112 and in Cook County to \$65.

As to federal courts, under Federal Procedural law, any federal court may tax as costs six different categories of fees.⁵⁴ The fees are fixed uniformly by the federal government throughout the U.S. Courts system, and is the same whether a litigant goes to the U.S. District court of the Southern District of New York for instance, or to the U.S. District Court of the Northern District of Illinois.

Below are two comparative tables of court fee examples passed to users in New York and Illinois by federal and state courts:⁵⁵

Table C.1 Court Fees Examples

U.S. District Court Southern District of New York		New York State Supreme Court/county clerk fees	
Type of fee	Amount	Type of fee	Amount
New Action (Complaint, Notice of Removal & Petitions)	\$400 Filing Fee	New action (All actions-mortgage foreclosures)	\$200-\$400
Attorney admission	\$200	Notice of appeal	\$65
Notice of appeal	\$505	Supreme Court action certified copy	\$8
Certified copy	\$11	Request for judicial intervention	\$95
Certificate of disposition	\$11	Note of issue	\$30 ^a
Apostille	\$2	Exemplification	\$25
Exemplification	\$21	Jury demand	\$65
Record search	\$30	Filing of a motion	\$45
Docket sheet	\$0.5/page	Filing of a cross-motion	\$45
Abstract of judgment	\$11	Filing of a Stipulation of Settlement	\$35
Appeal to district judge from a conviction	\$37	Filing of a Stipulation of Discontinuance	\$35
Registration of judgment	\$46	New York Appellate Division of the Supreme Court	
Miscellaneous filing fees	\$46/case	Filing of the Record on Appeal	\$315
Returned check fee	\$53	Motion or Cross-motion	\$45

Source: NY and Illinois Courts

^a The note of issue filing fee is \$125 where a request for judicial intervention is not required to be filed.

54 Title 28 United States Code (28 U.S.C. §1920): “Fees of the clerk and marshal; Fees for printed or electronically recorded transcripts necessarily obtained for use in the case; Fees and disbursements for printing and witnesses; Fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case; Docket fees; Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services.”

55 For a complete list, see at <https://www.nycourts.gov/forms/filingfees.shtml>; <http://www.nysd.uscourts.gov/fees>; <http://www.lakecountycircuitclerk.org/docs/default-source/default-document-library/filing-fees.pdf?sfvrsn=0>; http://12.218.239.52/Forms/pdf_files/CCG0603.pdf.

Table C.2 Court Fee Examples

U.S. District Court Northern District of Illinois		Circuit Court, Lake County Illinois, court fees		Circuit Court of Cook County, Illinois, court fees	
Type of fee	Amount	Type of fee	Amount	Type of fee	Amount
Civil filing fee	\$400	New Case filings ^a	\$65–966 ^b	Filing of civil action ^c	\$150–\$368 ^d
Court of Appeals Docketing Fee	\$500	Appearance Fees all cases ^a	\$131–\$176	Appearance Fees in a civil cases ^c	\$207–\$237
Notice of Appeal	\$5	Jury demand ^a	\$12–\$212	Jury fees ^c	\$12–\$230
Certified copy	\$11	Alias summons ^a	\$5	Alias summons ^{c,e}	\$6
Exemplification	\$21	Official certification ^a	\$6	Official certification ^c	\$9
Records search	\$30	Motion to vacate or modify ^a	\$25–\$75	Official certification for appeals ^f	\$110–\$185
Attorney admission	\$176 + \$50	Record searching ^a	\$6	Record searching	\$9
Registration of Judgment	\$46	Register foreign dissolution Judgment	\$291	Criminal and Quasi-Criminal Costs for each person convicted	
Appeal to District Judge	\$37	Correction of case number	\$25	Jury fee	\$250.00
Abstract of Judgment	\$11	Credit card convenience fee	\$1–\$3 percent of amount paid	Misdemeanor, business and petty offense complaints	\$110.00
Miscellaneous filing fees	\$46 /case	Returned check fee	\$25	Felony Complaints	\$190.00
Witness fee	\$40	Hard copy fee	\$6/page	Court appearance is required	\$30
				Court Automation Fee	\$25
				Document storage fee	\$25

Source: Illinois Courts

^a Depending on the nature of the claim (civil, family, probate, criminal).

^b New Case filings for an adoption = \$65.00/ new case filings for arbitration claims = between \$223 and \$291/ new case filing for a chancery action = \$291/ new case filing for dissolution = \$291/ new case filing for eminent domain = \$251/ new case filing for a family case = \$291/ new case filing for probate = between \$121 and \$351 etc. See for a complete list <http://www.lakecountycircuitclerk.org/docs/default-source/default-document-library/filing-fees.pdf?sfvrsn=0>.

^c Depending on the amount claimed.

^d Filing fee to initiate a civil action when the amount claim does not exceed \$250.00 = \$150/ exceeds \$250.00 but does not exceed \$1,000.00 = \$203.00/ exceeds \$1,000.00 but does not exceed \$2,500.00 = \$208/ exceeds \$2,500.00 but does not exceed \$5,000.00 = \$258.00/ exceeds \$5,000.00 but does not exceed \$15,000.00 = \$278.00/ exceeds \$15,000 = \$368.

^e Second summons that is issued if the person being sued did not receive the first summon.

^f Depending on the number of pages.

This detailed court fee structure makes the information easy to access compared to other jurisdictions. Nevertheless, American courts, whether State or Federal, charge a large number of court fees at every step of the system, from the courtroom, to jail, to probation. This structure may often add up to hundreds or thousands of dollars exclusive of lawyer’s fees, and hence could hinder access to justice. Indeed, studies have shown that not only court fees have increased in the recent years, but also that defendants are now “charged

for many government services that were once free, including those that are constitutionally required.”⁵⁶ For example, in 43 states and the District of Columbia, defendants can be billed for a public defender, in 41 states, inmates can be charged for room and board for jail and prison stays, and in all states except Hawaii and the District of Columbia, there's a fee for the electronic monitoring devices that defendants and offenders are ordered to wear.⁵⁷ Therefore, litigants are likely to face very high costs when trying to access justice in the United States.

France has extremely low costs even in relation to other developed countries such as the United States or the United Kingdom. This civil-law jurisdiction has enacted various statutes in the past decades that aimed at enhancing access to justice for all. For instance, a law of 1977 established the principle of free public service with regard to civil and administrative courts, and cancelled all fees that were applicable to obtaining judicial documents.⁵⁸ As a result, in civil and administrative proceedings, there are no filing fees to register a case, and anyone can bring an action provided that they have a righteous cause. This is different, however, before French commercial courts, where administrative tasks are handled by a separate entity, the *Greffier*, which is responsible for filing and administering commercial cases. As a result, litigants pay *Greffier* fees, which include filing fees in an amount that varies from \$65 to \$93 depending on the commercial court.⁵⁹ Nevertheless, unlike civil proceedings, hearings are oral and parties filing cases do not have to be represented by lawyers.

The French judicial system distinguishes between court fees, called *dépens*, and other costs, called *frais*, which are not comprised in court fees, such as attorney's fees. Pursuant to French civil procedural law, the *dépens* are those court fees that are legally indispensable in order to pursue an action. Eleven types of court fees are listed in the law and their amount is fixed either by law or by order of the court. They include fees or taxes paid to court officers and bailiffs or tax authorities (these fees are rare since the 1977 law instituting free public service), translation fees, witnesses' costs and expert witness fees, regulated lawyers' fees, social welfare investigation fees ordered in family and custody matters, the fees of the person appointed by the court to represent the interests of a child, and finally fees for service of process and other procedural acts abroad.⁶⁰ The French Code of Civil Procedure provides that these fees shall be paid by the losing party, provided that the judge does not rule otherwise.⁶¹ In the criminal justice sphere, court fees such as expert witness and witness fees, and investigation fees are covered by the State. The losing party, however, shall pay very low fixed court fees that are set out in a fee schedule.⁶²

The following table sets out examples of fees and corresponding amounts that are passed on to users for the administration of their case in France:

56 See the state-by-state survey conducted by National Public Radio and related report at <http://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor>.

57 See the state-by-state survey conducted by National Public Radio and related report.

58 Law n° 77-1468 of 30 December 1977 instituting free legal proceedings before civil and administrative courts, see <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000333072>.

59 For instance, the Paris Tribunal de Commerce's initial filing fee amounts to \$92 (€83) while the Bordeaux commercial court charges a filing fee of \$59 (€53).

60 See Article 695 of the French Code of Civil Procedure: "Costs relating to enforcement proceedings, instruments and procedures shall include: (1) The duties, taxes, fees or emoluments levied by the secretariats of the courts or the administration of taxes, with the exception of duties, taxes and penalties Acts and titles produced in support of the parties' claims; (2) The costs of translating documents when required by law or by an international undertaking; 3. The indemnities of witnesses; 4 ° The remuneration of technicians; 5 ° The disbursements paid; 6. The emoluments of the public or ministerial officers; 7 ° The remuneration of lawyers insofar as it is regulated, including the rights of pleadings; (8) Expenses occasioned by the notification of an act abroad; (9) Interpretation and translation costs necessitated by measures of inquiry carried out abroad at the request of the courts under Council Regulation No. 1206/2001 of 28 May 2001 on the Cooperation between the courts of the Member States in the taking of evidence in civil and commercial matters; 10 ° Social inquiries ordered pursuant to articles 1072 and 1248; 11 ° The remuneration of the person designated by the judge to hear the minor, in application of article 388-1 of the Civil Code."

61 Article 696 CCP "The losing party shall be ordered to pay the costs unless the judge, by reasoned decision, refuses to pay the whole or any part of it to another party."

62 See at <https://www.service-public.fr/particuliers/vosdroits/F1816>, \$35 for a trial before the Police Tribunal, \$142 before correctional courts, and \$588 before criminal courts.

Table C.3 Court Fees by Type of Trials

	Civil trials	Commercial trials	Criminal trials
Filing fees	\$0	\$65	\$0
Court officers and bailiff fees	Summons \$20 Service of process \$29 ^a	Summons \$20 Service of process \$29 ^a	\$0
Translation fees	Fixed by the Court	Fixed by the Court	\$0
Witness	Fixed by the Court	Fixed by the Court	\$0
Expert witness fees	Fixed by the Court	Fixed by the Court	\$0
Fees for procedural acts abroad	Fixed by the Court	Fixed by the Court	\$0
Certified court decision	\$0	\$3,47	\$4 or \$20 ^b
Other fixed fees	\$0	\$17- \$84 ^c	\$25; \$142; \$588 ^d

Source: French Courts

^a On a per service basis, see Article 2, Order of 26 February 2016 fixing the regulated tariffs of bailiffs, at <https://www.legifrance.gouv.fr/eli/arrete/2016/2/26/EINC1605791A/jo>.

^b \$4 for correctional courts' decisions and those that do not rule on merits; \$20 for all other decisions, see Article 8, Loi no. 77-1458, December 30, 1977.

^c These fees are payable to the Greffier, for various procedural acts and "judicial activities" such as injunctions for payment, see at http://www.greffe-tc-paris.fr/fr/fond-referes-requetes/tarifs_fond.html.

United Kingdom (UK)—In the UK, as in the United States, there is no principle of free public service. As a result, users are charged relatively high fees to access public services. In fact, following a 2015 Amendment, the Civil Proceedings, Family Proceedings and Upper Tribunal Fees (Amendment) Order 2016 that took effect in March that year, introduced a significant increase to court fees for certain types of civil and family proceedings in order "to make sure that the courts and tribunals are funded in the long term".⁶³ Nevertheless, those fees are set at a level supposed to cover the full cost of delivering those services.⁶⁴ Importantly, court fees are considered separate from other fees such as witness and expert witness fees, translators' fees, and bailiff' fees. Thus, an individual may have to pay multiple fees through the judicial process, including hearing and application fees.

In the UK, court fees are fixed costs that are determined according to the amount of the claim in issue. On average, court fees represent 3–5 percent of the overall cost of civil proceedings (Macfarlane 2007). This proportion is exclusive of other fees like experts' fees (5–10 percent), witness compensation (3–5 percent), translation/interpretation fees (5–7 percent), and lawyers' fees (70–90 percent). The court has wide discretion as to costs matters, particularly the amounts and whether costs are payable by one party to another. If the court decides to make an order about costs, the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party, but the court may make a different order.⁶⁵

The following table shows the costs of access to civil and criminal justice in the UK:

Table C.4 Court Fees in Civil and Commercial Trials

Filing Fees	Money claims	From \$45.5 to \$13,000 depending on the claim amount ^a
	Non-money claims	From \$400 to \$684 depending on the court ^b
Appeal	Filing fee for Appeal	From \$156 to \$311 ^c
	Appeal Notice	From \$182 (county) to \$312 (high court)
Hearing Fees	Small claims track	From \$32 to \$435 depending on the claim amount ^d
	Multi-track hearings	\$1,414
	Fast Track	\$707
Bailiff	\$113 (£100) to request Bailiff service of an order for a debtor to attend court for questioning in family courts, and \$143 in civil court. \$143 in family court for a request for service by a Bailiff for any document	

⁶³ See Former Minister of State for Justice Lord Faulks' comment at [https://hansard.parliament.uk/Lords/2016-03-15/debates/16031576000642/CivilProceedingsFamilyProceedingsAndUpperTribunalFees\(Amendment\)Order2016](https://hansard.parliament.uk/Lords/2016-03-15/debates/16031576000642/CivilProceedingsFamilyProceedingsAndUpperTribunalFees(Amendment)Order2016)

⁶⁴ See Former Minister of State for Justice Lord Faulks' comment at [https://hansard.parliament.uk/Lords/2016-03-15/debates/16031576000642/CivilProceedingsFamilyProceedingsAndUpperTribunalFees\(Amendment\)Order2016](https://hansard.parliament.uk/Lords/2016-03-15/debates/16031576000642/CivilProceedingsFamilyProceedingsAndUpperTribunalFees(Amendment)Order2016)

⁶⁵ See Civil Procedure Rules (CPR), Part 44, Rule 44.2.

Copies	\$13 (£10) for 10 pages, 50p for additional pages
Witness	\$65 for a witness summons
Expert	For claims up to \$13,000 (£10,000), fee capped at \$978 (£750); All other case, judge's discretion.
Authenticated court decision	\$65 on a per act basis.
Translation fees	No regulations governing such fees, determined by translators
COURT FEES IN PROCEEDINGS BEFORE MAGISTRATE'S COURTS	
Expert witness	Expert witness and interpreters allowances are discretionary.
Appeal	From \$266 (£205) for an application to \$669 (£515) for an application to state a case for the opinion of the High Court
Certified documents	From \$20 (£15) to \$136 (£105), ^e with a \$78 fee (£60) for a request for a certified documents, and a \$78 fee (£60) for a certified copy of a memorandum of conviction.
Copies	Copy of a 10-page or less document \$13 (£10) 50p for each subsequent page
Oaths	\$32 (£25) when no other fee is specified
OTHER FEES IN CRIMINAL PROCEEDINGS BEFORE MAGISTRATE'S COURTS and CROWN COURT	
Preparation	\$59 (£45,35) per hour per solicitor
Advocacy	\$74 (£56.89) per hour per solicitor
Attendance	\$40 (£31.03) per hour per solicitor
Travel and wait	\$31 (£24.00) per hour per solicitor
Routine letters calls	\$4 (£3.56) per item
COURT FEES IN CRIMINAL TRIAL BEFORE COURT OF APPEAL	
Preparation	Between \$40,4 (£31,03) and \$66 (£50,87) per hour depending on the seniority of the solicitor
Advocacy	Between \$66,6 (£51,10) and \$76 (£58,4) per hour depending on the seniority of the solicitor
Travel and wait	Between \$15 (£11,41) and \$29 (£22,58) per hour depending on the seniority of the solicitor
Routine letters calls	\$4 (£3.15) per item

Sources: Leaflet EX50 Civil and Family Court fees, at <https://formfinder.hmctsformfinder.justice.gov.uk/ex50-eng.pdf>; Source: leaflet EX50A HMCTS: 25th July 2016; leaflet EX50 Civil and Family Court fees, at <https://formfinder.hmctsformfinder.justice.gov.uk/ex50-eng.pdf>.

^a For money claims amounting from \$0 to \$389, the filing fee represents \$45.5, and for money claims of over \$259,000, the filing fee amounts to \$13,000.

^b To file a non-money claim before the county court, litigants shall pay a fee of \$400, and for no-money claims before the High Court, litigants shall pay a fee of \$684.

^c \$156 for appeals before the county court (small claims track), \$182 for appeals before the county court for all other claims, and \$311 for appeals before the High Court.

^d For Small Claim Track where the amount claimed is: up to \$389 - \$32/between \$389,01 and \$649 - \$71/ between \$71.01 and \$1,298 - \$103/ between \$1,298.01 and \$1,946 - \$149/ between \$1,946.01 and \$3,893 - \$220,6/ more than \$3,893 - \$460/ Fast track claim - \$707/ Multi track claim - \$1414.

^e £15 to request a certificate of satisfaction, and £105 to request a certificate of refusal to state a case.

For instance, if litigant 'A' filed a money claim of \$389 before a civil court, 'A' may be exposed to incur a minimum of: (\$45,5 for initial filing fees) + (\$32 for a small claims track's hearing fees) + (\$156 Filing fee for Appeal) + (\$182 for an Appeal Notice before the county court) + (\$143 to request Bailiff service of an order for a debtor to attend court for questioning) + (\$65 for a witness summons) + (\$65 for an authenticated court decision) = \$688. *Singapore*—Litigants are responsible for paying court fees and hearing fees in order to access Justice. Court fees are statutorily fixed and listed in fee schedule. In this schedule, a total of 111 different types of court fees are referenced. Just like in the UK and the United States, court fees are payable throughout the judicial process, from the commencement of an action to its end. Particularly, when documents are filed to or lodged with the Court, upon the sealing of any document and for the provision of copies of documents. In addition, for matters before the Court of Appeal, an appellant may be required to provide a security deposit for the respondent's costs in appeal. The following table provides a few examples of courts fees that can be charged to users throughout the course of civil proceedings:

Table C.5 Court Fees in Civil Proceedings in Singapore

Type of Fees		Supreme Court with value of up to \$734,643 ^a	Supreme Court with value of more than \$734,643	District Court	Magistrate's Court
Commencement of a cause, appearance and pleadings	Originating processes and pleadings	\$367	\$735	\$110	\$73
	Sealing originating/renewed summons	\$183	\$368	\$37	\$18
	Entering an appearance for each party	\$73	\$145	\$15	\$7
Interlocutory Actions	Sealing summons seeking injunctions, or discovery orders	\$367	\$735	\$73	\$34
	Sealing other summons	\$73	\$145	\$15	\$7
	Filing a request for service of process outside the jurisdiction	\$73	\$145	\$37	\$18
Entering or setting down for trial or hearing	Setting down a cause for hearing or judgement	\$367	\$735	\$145	\$110
Writs and writs of execution	On sealing 1 subpoena to testify and/or to produce documents	\$37	\$73	\$7	\$7
Judgment and order	Entering or sealing a judgement/Court order	\$73	\$145	\$36	\$18
Appeals from Registrar/Magistrate/District Judge in chambers	Notice of appeal to a High Court Judge	\$367	\$735	\$110	\$110
	Notice of appeal from Registrar to District Judge			\$73	\$73
Appeals from High Court	Notice of appeal to Court of Appeal	\$735	\$1469		
	Filing Appellant's Case and Appellant's Reply	\$2,204; \$735	\$2,204; \$735		
	Filing a Respondent's case	\$735	\$735		
Appeals to High Court	Notice of appeal			\$441	\$441
	Filing an Appellant's Case	\$441	\$441	\$441	\$441
Inspection / Copies / Translations	Per request for certified copies of documents	\$6/document + 5/page	\$6/document + 5/ age	\$6/document + 5/page	\$6/document + 5/page
	Per request for plain copies of documents	\$4/document +0.15/ page	\$4/document +0.15/ page	\$4/document +0.15/ page	\$4/document +0.15/ page
	Per application to inspect a court file	\$15	\$15	\$15	\$15

Source: Singapore Rules of Court, Appendix B. Complete list available at Singapore Statutes Online: [http://statutes.agc.gov.sg/aol/search/display/view.w3p;ident=fb5b00a2-60d1-4397-8942-028b53dee27a;query=\(CapAct%3A322%20%7C%20ParentCapAct%3A322\)%20Depth%3A0%20Status%3Ainforce;rec=5;resUrl=http%3A%2F%2Fstatutes.agc.gov.sg%2Faol%2Fsearch%2Fsummary%2Fresults.w3p%3Bquery%3D\(CapAct%253A322%2520%7C%2520ParentCapAct%253A322\)%2520Depth%253A0%2520Status%253Ainforce#SaB-](http://statutes.agc.gov.sg/aol/search/display/view.w3p;ident=fb5b00a2-60d1-4397-8942-028b53dee27a;query=(CapAct%3A322%20%7C%20ParentCapAct%3A322)%20Depth%3A0%20Status%3Ainforce;rec=5;resUrl=http%3A%2F%2Fstatutes.agc.gov.sg%2Faol%2Fsearch%2Fsummary%2Fresults.w3p%3Bquery%3D(CapAct%253A322%2520%7C%2520ParentCapAct%253A322)%2520Depth%253A0%2520Status%253Ainforce#SaB-)

^a S\$1million.

Apart from court fees, hearing fees will also be charged for matters heard by the Court of Appeal, a High Court judge or a registrar. Hearing fees are paid by plaintiffs, appellants or applicants, unless otherwise ordered by

the judge. They are easily accessible to the public, and are exhaustively listed in statutory regulation. Their amount is based on the duration of the hearing, on the court before which the matter is being heard, and the value of the claim whether the claim's value is up to S\$1 million (\$734,643) or more. In addition to hearing fees, fees will also be passed to users for the appointment of witnesses and every witness sworn or examined:

Table C.6 Court Fees based on the Value of the Claim

Hearing before the Court of Appeal	Value of Claim up to S\$1 Million	Value of Claim More than S\$1 Million
1st Day	No Charge	No Charge
2nd Day onwards	S\$4,000 per day	S\$6,000 per day
Hearing before a High Court Judge	Value of Claim up to S\$1 Million	Value of claim more than S\$1 million
1st to 3rd day	No Charge	No Charge
4th day	S\$6,000 per day	S\$9,000 per day
5th day	S\$2,000 per day	S\$3,000 per day
6th to 10th day	S\$3,000 per day	S\$5,000 per day
11th day onwards	S\$5,000 per day	S\$7,000 per day
Hearing before a High Court Registrar for examination of witnesses	Value of Claim up to \$1 Million	Value of Claim More than \$1 Million
appointment for the examination of a witness	S\$100/appt	S\$200/appt
Witness sworn/examined	S\$250 for each hour	S\$500 for each hour

Source: Singapore Courts

It therefore appears that similar to the other common-law jurisdictions herein studied, judicial proceedings in Singapore have several different layers to which corresponds and equal number of court fees.

To illustrate this court fee structure, suppose that in a case before the Magistrate's Court,⁶⁶ litigant 'A' may have to pay the following court fees: (\$73 for all originating processes and pleadings containing a claim or cause of action where no other fee is specifically provided) + (\$18 for sealing an originating summons) + (\$7 on entering an appearance) + (\$34 for sealing summons seeking a discovery order) + (\$110 for setting down a cause for hearing) + (\$7 on sealing a subpoena to testify and/or to produce documents for each witness) + (\$18 on entering or sealing any judgement) + (\$441 for filing a notice of appeal to Court of Appeal) + (\$6 per request for certified copies of documents) + (\$4 for a request for plain copies of documents) = \$718.

In a case before the High Court of the Supreme court for \$100,000 with an appeal before the Court of Appeal, a litigant may have to pay the following court fees: (\$367 for all originating processes and pleadings containing a claim or cause of action where no other fee is specifically provided) + (\$183 for sealing an originating summons) + (\$73 on entering an appearance) + (\$367 for sealing summons seeking a discovery order) + (\$367 for setting down a cause for hearing) + (\$37 on sealing a subpoena to testify and/or to produce documents for each witness) + (\$73 on entering or sealing any judgement) + (\$735 for filing a notice of appeal to High Court) + (\$2,204 for filing Appellant's Case Appellant's) + (\$735 for filing a respondent's case) + (\$735 for filing Appellant's Reply) + (\$6 per request for certified copies of documents) + (\$4 for a request for plain copies of documents) = \$5,886. In addition to the court fees, because in this scenario the litigants have appeared before the Court of Appeals, they will have to pay hearings fees if they stay in court more than one day. If the hearing lasts 2 days, the litigants will have to pay \$4,000, making the total out-of-pocket amount of court fees and hearing fees amount to a minimum of (\$5,886 + \$4,000) = \$9,886, which amount is exclusive of other costs such as attorney fees and enforcement fees.

Gabon—Gabon is a civil-law jurisdiction that gained independence from France in 1960. Its legal system and the structure of its judiciary draw inspiration from the French civil-law system. Access to the Gabonese national legislation is difficult because not well organized. There is no official website put in place by the judiciary, and the Gabonese official gazette, the Journal Officiel de la République du Gabon, is only available in print form. Consequently, apart from abstracts of the Gabonese civil code which can be found on private websites⁶⁷, other statutes, laws and court decisions are not accessible to the public. In light of the above, it comes with little

⁶⁷ See Gabon's civil code, <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/58663/107508/F2044935657/GAB-58663.pdf>.

surprise that no online official information as to Gabon's court fee structure is available to litigants. Some insight into this court fee structure, however, was found in a private European publication on access to justice of Gabon's indigenous people.⁶⁸ According to this study, article 422 of the Gabonese civil code of procedure provides that plaintiffs shall make a deposit to the courts' registrar in order to cover court fees. This deposit includes an initial filing fee of approximately \$20, to which must be added a minimum amount of \$100 to cover bailiffs' fees, expert witnesses' fees and witnesses' costs, and the costs of official procedural documents such as summons or certified copies of court decisions.

In a country where the minimum monthly salary amounts to \$277,⁶⁹ the study concludes that the Gabonese court fee structure and the high amounts charged to users are likely to prevent access to justice. This conclusion is confirmed when put into perspective with other costs incurred by users of the judiciary in Gabon. Indeed, the Doing Business Report 2016 states that, in contract claims in Gabon, the costs incurred by users, and consisting of attorney fees, court fees and enforcement fees, represented 34.3 percent of the total amount claimed in court, with court fees representing 4.1 percent of that amount.⁷⁰ For instance, based on the numbers of this report, suppose that litigant 'A' claims an amount of \$1,000 in court. The total costs incurred by 'A' will amount to \$343, with court fees of \$41, attorney fees of \$162 and enforcement fees of \$140. If 'A' loses his case, he will not recover these out-of-pocket costs. In addition to the high cost of the justice system, the lack of easily accessible official information on court fees is also a major hurdle to access to Justice in Gabon to the extent that litigants wanting to access courts will have to incur additional costs having to visit said courts themselves or contacting an attorney to find information thereon.

Cote d'Ivoire - Cote d'Ivoire is also a West African country, formerly under the French colonial empire. After the country gained independence in 1960, its judiciary was reformed but its legal system maintained influences of the French legal system. Cote d'Ivoire's court fee structure is explained in detail in the decree *No.2013-279* "charging fees and expenses in civil, commercial, administrative and social matters of 2013".⁷¹ The decree can be found electronically, and regulates court fees as well as the fees of other regulated professions such as mandatory lawyers' fees and notary fees. In Cote d'Ivoire, court fees encompass initial filing fees and registrar's fees, official and certified copies, notary fees, bailiff and other court officers' fees such as licensed auctioneers, and expert witness fees. Litigants shall make a deposit to the registrar before the beginning of the proceeding in order to cover the fees or taxes paid to court officers and bailiffs or tax authorities.

Filing fees cover all the procedural work done by the court and its registrar (*Greffier*), from the filing of the case to the drafting of judgements or orders of the court, to the appeal phase. The filing fees are statutorily fixed. However, in the event that a case was struck off before a judgement on the merits was issued, or in the event of interim proceedings or of cases involving minors, the amount of those fees is to be reduced by half. Below is a table of the main court fees charged to users in Cote d'Ivoire:

⁶⁸ Banque Africaine de Développement, Fonds Africain de Développement, "Profil de Gouvernance, République Gabonaise", at <http://www.clientearth.org/ressources-externes/gabon/Droit-acces-justice-Aout-2014.pdf>.

⁶⁹ See <http://www.lenouveaugabon.com/une-gouvernance/2606-9213-hausse-des-salaires-des-fonctionnaires-le-point-sur-un-casse-tete-public-au-gabon>. See e.g. <http://www.loidici.com/Quisuisje.php>.

⁷⁰ See <http://www.doingbusiness.org/data/exploreconomies/gabon/#enforcing-contracts>.

⁷¹ https://cotedivoire.eregulations.org/media/decret%20portant%20emoluments%20des%20frais%20de%20justice%20en%20matiere%20civile,%20commerciale,%20administrative%20et%20sociale_2.pdf

Table C.7

Type of court fees	Amount	
Filing fees	\$10 (6,000 XAF) before a court of appeals	
	\$7 (4,000 XAF) before first instance tribunals	
Registrars' fees	\$9 (5,000 XAF)	
Certified copies	\$0.34 per page	
Plain copies	\$0,17 per page	
Court clerk travel costs	\$0.52 per kilometer + to a travel allowance calculated based on the time spent traveling	
Bailiff fees	Service of process	\$60
		\$86 for proceedings before the court of appeals or higher courts.
	To collect an official signature from a judicial or administrative authority	\$17
Expert witness fees	For a request to appear	\$17
	For the drafting of a report requested by the court	\$26
	Travel costs	\$0.52 per kilometer + to a travel allowance calculated based on the time spent traveling

If litigant 'A' goes to a first instance court to claim an amount of \$1000, 'A' may have to pay: (\$7 for filing fees) + (\$9 for the registrar's clerk's fees) + (\$60 for a bailiff's serving a defendant) + (\$43 for a subpoena to request the appearance of an expert witness and to cover his drafting of a report) + (\$1.36 for a copy of a 4-page judgement) = \$120,36. But if 'A' went to court to claim \$300 or \$100,000, he may also be charged the same amount of court fees.

Appendix D. Legal Aid Examples from Developed Countries

The right to legal aid is enshrined in a number of leading international human rights documents such as the European Convention for the protection of Human Rights and the International Covenant on Civil and Political Rights. Said international standards typically set out a two-prong test that individuals must meet to be eligible for legal aid. First, insufficient means to pay for legal assistance (the “means” test). Second, a demonstration that the interests of justice so require, that is, the State must decide whether the public interest in the proper administration of justice requires that the applicant be provided with legal assistance (the “merits” test). Case law has taken into account three factors in determining whether this second criterion has been met: the seriousness of the offence and related severity of a potential sentence; the complexity of the case; and the personal situation of the applicant.⁷² It follows that legal aid is not guaranteed in every case. When granted, however, legal aid may comprise either a full coverage of legal costs, including court fees and legal representation, or a partial coverage or subsidy. Table D.1 below compares the financial thresholds applicable in various national legal systems and the corresponding coverage.

Table D.1 Financial Thresholds in Select Legal Systems

Country	Income	Maximum income for full coverage of single applicant	Income	Maximum income for partial subsidy for single applicant
Australia ^a	Monthly	120 percent below poverty line	Depending on State	Depending on State
	Asset Matter ^b	=/< allowed income		
		Not available		
France ^c	Monthly	€1,180	Monthly	€1,362–1,680 = 25–55 percent
United States ^d	Yearly	125 percent below poverty line	NA	NA
Finland	Monthly	€600	Monthly	€800–1300 = 80–25 percent
Netherlands	Yearly (y-2)	€25,600	NA	NA
	Assets	€21,139		
Poland ^e	Discretionary	Discretionary	Discretionary	Discretionary
Russia ^f	Discretionary	Discretionary	Discretionary	Discretionary
South Africa	Monthly	Rand 5,500 ^g after tax	Not available	Not available
	Ownership of house	Yes – maximum R500 thousand No – max value of belongings R100 thousand		

Sources:

^a Australia: Legal Aid Act, Legal Assistance Guidelines, reprinted with Amendments: 17 February 2016, p. 58.

^b E.g. criminal proceeding in territory matters will not benefit from legal aid if the cost of granting it is likely to exceed AU\$100k. More details at Legal Aid Act, op. cit. note 13, pp. 6 et. Seq.

^c €1,180, see at <https://www.service-public.fr/particuliers/vosdroits/F18074>.

^d Legal Services Corporation, fiscal year 2016 budget request, at <http://www.lsc.gov/media-center/publications/fy-2016-budget-request>. In 2016, 125% of the federal poverty line: \$14,830 for individuals, \$30,375 for a family of four.

⁷² For an analysis of international case law on the merits test, see “The European and International Standards on the Right to Legal Aid”, Open Society Justice Initiative (2014), at para. 21 et. seq., available at https://www.opensocietyfoundations.org/sites/default/files/international-minimum-standards-right-legal-aid_English-20150210.pdf.

⁸ In Poland, there is no legislation addressing the provision and organization of legal aid. As a result, there is no specific framework or criteria of eligibility. In practice, however, indigent defendants in criminal cases may receive legal aid on the condition that their case falls within the scope of cases for which defense is mandatory, see at Open Society Foundation, "Legal Aid in: Poland", p. 1.

¹ Burmitskaya, E. 2012. "World's Models of Legal Aid for Criminal Cases: What can Russian Borrow, Lambert Academic Publishing.

⁹ Approximately \$400.

In addition to financial thresholds, some jurisdictions set the exhaustion of all other means as a pre-condition to receiving legal aid. For example, in France, Germany and Finland among others, legal expenses insurances must be exhausted first. However, in Finland, legal aid can be granted so as to cover the deductible of such insurance, provided that the individual would have otherwise qualified for free legal aid based on his or her income.⁷³ It is also important to stress that in some countries, certain types of victims are automatically eligible for legal aid regardless of income. In France for instance, victims of crimes may access legal aid free of charge, without consideration of income. In South Africa, children automatically qualify for legal aid in criminal cases.⁷⁴

Sources of funding – Legal aid schemes are typically funded by a combination of public and private sources. However, because international conventions and national constitutions mandate governments to ensure that legal aid is available, public funds are usually the most common source of funding. Legal aid, or legal assistance, typically arises in the form of a government subsidy, favorable tax policy frameworks⁷⁵, or legislation requiring or encouraging the legal profession to offer pro bono services. It can also be directly provided by the government through the use of public defenders, legal aid centers, or hotline services. However, public contribution to legal aid schemes naturally varies from one country to another. For instance, legal aid schemes in European countries such as France are largely publicly funded whereas U.S public involvement in its legal aid scheme remains limited. In particular, civil legal aid in the United States is mostly managed by private sources while much of the budget for criminal defense comes from state or local government. Box 2 below compares various jurisdictions' overall judiciary budgets and the corresponding proportion of public involvement in their legal aid scheme:

Table D.2

	Country	2016 total Public Expenditure on Justice system in million	2016 Public Contribution to Legal Aid in million	Percent of annual public expenditure allocated to Legal aid	Public contribution per capita
1.	Australia	AU\$962	AU\$250,9	26,9 percent	AU\$10,46
2.	France	€8,000	€405	5,1 percent	€6
3.	Finland	€899	€67.7	7.5 percent	€12.45
4.	Netherlands	€10,000	€432	4.4 percent	€25.7
5.	Poland	No info	€23	No info	€0,72
6.	Russia (2012)	€11,000	€119	<1 percent	€0.83
7.	Tanzania	Tzs393,000	< Tzs5000	< 1 percent	<Tzs100
8.	South Africa	R16,900	R1,752 ⁷⁶	10,4 percent	R33 ⁷⁷
9.	UK (2015)	£9,000	£ 1,700	18.9 percent	£26.5
10.	USA	\$28,000	\$385 civil legal aid \$24 indigent defense	1.45 percent	\$1.28
11.	United States	No info	\$2.3 billion (2012)	No info	\$7.2

Source: .

^a The organization and management of legal aid is left to the discretion of the States. However, pursuant to an agreement with the states and independent territory legal aid commissions (LACs), the government provides funding for Commonwealth family, civil and criminal law matters, and to independent community legal centers, which are non-profit organizations that provide free referral, information and advice.

^b See "European Judicial Systems – Efficiency and Quality of Justice, an Overview", ed. 2014 (2012 data), European Commission for the Efficiency of Justice.

^c See "European Judicial Systems – Efficiency and Quality of Justice, an Overview", ed. 2014 (2012 data), European Commission for the Efficiency of Justice.

⁷³ See "Information on Legal Aid – What kinds of matter can you get legal aid for", Ministry of Justice of Finland's website, at <https://oikeus.fi/en/index/esitteet/oikeusapu/mihinasioihin-oikeusapuasaa.html>.

⁷⁴ Legal Aid South Africa, "Who Qualifies for Legal Aid?", available at <http://www.legal-aid.co.za/?p=956>.

⁷⁵ For instance, South African has a constitutional mandate to offer tax-funded legal assistance to eligible people.

⁷⁶ See Legal Aid South Africa, Integrated Annual Report 2015–2016, approximately \$12, 8 million.

⁷⁷ Approximately \$2.4.

^d Approximately equivalent to \$160 million.

^e Less than \$2 million are allocated to the Commission for Human Rights and Good Governance. Data available at The United Republic of Tanzania Ministry of Finance, Government Budget for Financial Year 2015/2015, Citizen's version Budget. http://www.mof.go.tz/mofdocs/budget/Citizens%20Budget/CITIZENS%20BUDGET%202015_2016%20_ENGLISH.pdf.

^f See at <http://www.gov.za/speeches/address-michael-masutha-mp-adv-minister-justice-and-correctional-services-occasion-justice>. Amount equals approximately \$1.24 billion.

^g See Legal Aid South Africa, Integrated Annual Report 2015–2016, approximately \$12.8 million.

One consequence of a government's unwillingness to fund legal aid is that access thereto becomes mostly dependent on private funding, with private actors becoming primary providers of legal aid services. Such private providers include NGOs, legal professionals performing pro bono services, independent university law clinics. In some cases, individual courts are responsible for funding legal aid services. For example, Poland does not have a unified legal aid system, and no public expenditure is allocated to a legal aid scheme. Legal aid is therefore funded through the court's limited budgets, bearing in mind that the decision to grant legal aid falls upon Polish judges. Furthermore, Box 2 above also shows that the Tanzanian Government is only to a very minor extent involved in the country's legal aid scheme. As a result, while the State organizes and manages criminal legal aid in compliance with its constitution,⁷⁸ civil legal aid is mostly a non-state initiative.⁷⁹

In light of this observation, it is important to stress that the level of public funding is a crucial element of legal aid and access to justice. Indeed, studies suggest that the percentage of the population eligible for legal aid depends on the budget allocated by the State and specifically, the "means" criteria as set out by each jurisdiction. For instance, experts estimate that roughly 20–25 percent of the French population is eligible to have all expenses covered. In the United States, 19.7 percent of the population qualifies for legal aid in 2013,⁸⁰ though according to a 2009 report on the United States independent non-profit Legal Services Corporation, 50 percent of all applicants seeking legal aid from LSC grantees were turned away because of a lack of adequate resources.⁸¹ By contrast, approximately 75 percent of the Finnish population is eligible for full or partial legal aid⁸², and in 2009, 40 percent of the Dutch population qualified for subsidized legal aid.⁸³

Scope of legal aid – Depending on the country, legal aid schemes may cover all or only specific types of legal matters. Box 1 below reflects the types of cases excluded from legal aid coverage in various jurisdictions. It should be noted that in Australia, legal aid is primarily delivered through the states and LACs. As a result, the scope of legal aid varies throughout the country.⁸⁴ In particular, LACs may provide legal aid grants for family law, criminal law and only some civil law cases depending on the State's legislation. For instance, the State of Victoria excludes business, land, defamation, intellectual property, pay disputes, work injuries and wills and estates matters from the scope of free advice services. **Tanzania's** legal aid scheme, which mainly consists of pro bono legal services, covers only tort cases and a variety of civil cases, and excludes criminal cases.

⁷⁸ Article 13 of the Constitution of the United Republic of Tanzania of 1977 (as amended)

⁷⁹ For a detailed analysis of Tanzania's legal aid scheme, see "Access to Justice and Legal Aid in East Africa" op. cit. at note 8.

⁸⁰ In 2013, the most recent year for which data are available, it was estimated that 63,6 million of Americans were qualified to receive legal aid based on their annual income, see Legal Services Corporation, op cit. at note 14.

⁸¹ *Ibid.*

⁸² See "Legal Aid in Europe: Nine Different Ways to Guarantee Access to Justice?", Hill Report, 21 February, 2014, at p. 37.

⁸³ S. Peters, L. Combrink, P. Van Den Biggelaar, "Legal Aid in the Netherlands", (2009), p. 1.

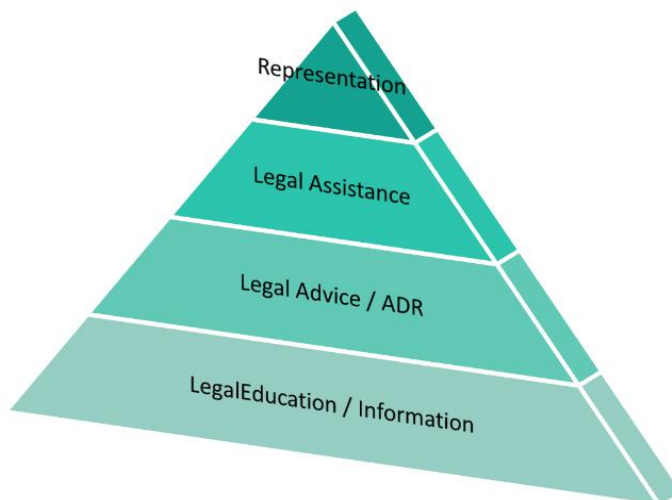
⁸⁴ See op. cit. Legal Aid Act note 13, pp. 6 *et. Seq.*

Box 1 provides types of cases excluded from the scope of legal aid:

	Box 1.	Types of cases excluded from the scope of legal aid
1.	Poland	None
2.	Belgium	None
3.	England & Wales	Private family law unless evidence of domestic violence or child abuse; personal injury; clinical negligence cases; employment cases; housing cases; most education cases; debt cases; social benefits excepts for appeals; immigration cases where the person is not detained
4.	Finland	Simple petitionary matters; Criminal matters where only a fine is anticipated; matters pertaining to taxes; matters where the claim is based on residency in a given municipality; clear cases such as undisputed divorces (though legal aid offices still offer advice and consultation)
5.	Australia	Depending on State
6.	South Africa	Criminal defamation, public indecency, contempt of court, traffic offences, failure to render tax returns
7.	Tanzania ⁸⁵	Criminal law cases and some civil cases
8.	USA	Most advocacy and representation before legislative bodies and administrative rulemaking proceedings; Class actions; representation in redistricting cases; litigation re. abortion

Available legal aid services – As mentioned above, legal aid is a fundamental right of all people who are in a vulnerable position and in most need of legal assistance. In particular, because the judicial process typically involves at least three phases – information and advice, negotiation, and litigation – it is crucial for the efficiency of the system that eligible individuals benefit from legal aid at each step of the way. Indeed, research has stressed the importance of the provision of legal aid throughout the entire judicial process, and particularly at the earlier stage of a criminal or civil proceeding to allow individuals, at their peak of vulnerability, to make informed decisions.

Figure: The Legal Aid Pyramid.



Source: Legal Services Facility, Enhancement of Legal Aid in Tanzania, 2012.

⁸⁵ "Access to Justice and Legal Aid in East Africa" op. cit. at note 8, pp. 68–69.

Box 2 provides a comparison of the nature and scope of legal aid services available in various national legal aid schemes:

	Box 2.	Legal aid services	Providers
1.	Australia	<ul style="list-style-type: none"> • Information, education and telephone advice • Duty lawyer services for unrepresented people • Representation in court 	Community legal centers, LACs in-house lawyers, private lawyers
2.	France	<ul style="list-style-type: none"> • Information, legal advice and assistance • Assistance with drafting legal documents • Referral to lawyers, mediators, etc. • Representation in court 	Courthouses, Conseil Départemental d'Accès au Droit, Maison de Justice et du Droit, Lawyers
3.	England & Wales	<ul style="list-style-type: none"> • Advice for debt, education, employment, family, housing & welfare benefits • Letters and interventions • Assistance in preparing documents • Assistance with negotiations • Mandatory telephone gateway 	CLA, Law Centers, pro bono Lawyers
4.	Scotland	<ul style="list-style-type: none"> • Negotiations on behalf of the applicant • Assistance in writing documents • Advice on whether to take case forward and apply for procedural assistance 	Lawyers from criminal and civil legal assistance register
5.	Finland	<ul style="list-style-type: none"> • Advice • Assistance in the drafting of legal documents • Representation 	Attorneys employed by legal aid offices, external advocates or licensed attorneys
6.	USA	<ul style="list-style-type: none"> • Information and advice • Assistance • Representation in court 	Attorneys, public defenders, legal aid centers
7.	Netherlands	<ul style="list-style-type: none"> • Information and advice • Immediate assistance of lawyer free of charge in criminal cases • Referral to lawyers, mediators⁸⁶ 	Lawyers by decision of the Legal Aid Board
8.	Poland	<ul style="list-style-type: none"> • Representation 	Lawyers upon judge' decision
9.	Russia	<ul style="list-style-type: none"> • Representation 	Barred lawyers upon Judge's decision. ⁸⁷
10.	Tanzania	<ul style="list-style-type: none"> • Information and advice • Representation 	Lawyers employed by civil society organizations upon decision of High Court or Magistrate Court

⁸⁶ "Legal Aid in the Netherlands, a Broad Outline", Legal Aid Board, (2015), p 14.

⁸⁷ E. Burmitskaya, op. cit., at p. 45.

Box 3 provides a detailed overview of the services available through legal aid schemes during the adjudication stages across various jurisdictions⁸⁸:

	Box 3.	Court fees	Procedural assistance	Expert fees	Translation	Travel costs	Other
1.	Australia	Yes	Yes	No info	No info	No info	No info
2.	France	Yes	Yes	Yes	Yes	No info	Bailiff
3.	England & Wales	Yes	Yes	Yes	Yes	No info	No
4.	Scotland	Yes	Yes	Yes	No info	No info	Prep. of trial
5.	Finland	Yes	Yes	Yes	Yes	Yes	No info
6.	USA	No info	Yes	No info	No info	No info	No info
7.	Netherlands	No	Yes	Yes	Yes	Yes	Bailiff
8.	Poland	Yes	Yes	Yes	No info	Yes	No info
9.	Russia	No info	Yes	No info	No info	No info	No info
10.	Tanzania	No info	Yes	No info	No info	No info	No info

As shown in Boxes 2 and 3, the existence of a legal aid scheme does not guarantee either access to legal aid or the availability of satisfactory legal aid services. Indeed, in addition to eligibility criteria, the availability of legal aid services, and the scope of legal aid services, other factors come into play to determine the efficiency of a legal aid scheme. Such factors include the availability of service providers and sufficient financial and technical capacity building to keep up with the increasing demand for legal aid. Indeed, it is material that services providers be equipped with the necessary means to adequately perform their mission. In conjunction with the financial and technical efforts that a well-functioning legal aid scheme requires, the awareness of the population about their legal rights is a decisive factor in determining the quality of a legal aid system. This too calls for the need to supply adequate communication tools, and develop effective outreach strategies that will reach the population regardless of their geographical location.

Legal Aid challenges—In many developed jurisdictions, protests and serious backlashes from the public and the legal profession were triggered by cuts in legal aid budgets combined with an increase in court fees. For instance, in 2015, the UK’s budget for legal aid was cut by 8.75 percent, the second within a year, and the number of contracts for attending magistrates’ courts reduced by two-thirds. The same year, the number of contracts for duty lawyers to advise suspects detained in police stations fell from 1,600 to 517. In addition, as early as 2012, the Legal Aid Act wholly or partially removed areas of law from the scope of legal aid, leading to a number of protests and concerns that such reduction might undermine the justice system. In light of such reductions and cuts, it comes without surprise that civil law cases funded by legal aid dropped by 36.5 percent between 2012 and 2016, that is, from 724,243 cases in 2012–2013 to 258,460 in 2015–2016.⁸⁹

In the United States, while state funding of legal aid schemes has improved, legal aid has suffered major federal budget cuts in the past 10 years. Indeed, LSC’s budget went from \$420 million in 2010 to \$375 million in 2015 and went up again in 2016 reaching \$385 million.⁹⁰ To illustrate such budget cuts, a 2014 study⁹¹ showed that in Massachusetts, 64 percent of eligible cases were turned away in 2014, of which people seeking assistance in family law cases were turned away 80 percent of the time.⁹²

A recent study conducted in New York showed that legal aid triggered major cost savings: for each \$1 in funding, legal aid providers generated \$6 in economic benefits for all New York residents⁹³. The study illustrated its finding by highlighting annual savings of \$85 million in costs associated with assistance for domestic violence survivors.

⁸⁸ Based on a model by Hill as included in its report op. cit. note 34, at p. 45.

⁸⁹ O. Carter, R. Francis, J. Beck, N. Mackintosh, S. Hynes, *Overdue review into legal aid cuts is a denial of justice*, The Guardian, 22 July 2016.

⁹⁰ See “Civil Legal Aid in the United States, an Update for 2015, A Report for the International Legal Aid Group”, Alan W. Houseman, President Consortium for the National Equal Justice Library, December 2015, at p. 1.

⁹¹ Investing in Justice, A Roadmap to Cost-Effective Funding of Civil Legal Aid in Massachusetts. A Report of the Boston Bar Association Statewide Task Force to Expand Civil Legal Aid in Massachusetts, October 2014.

⁹² Legal Services Corporation, op. cit. at note 14.

⁹³ The Task Force to Expand Access to Civil Legal Services in New York, Report to the Chief Judge of the State of New York, State of New York Unified Court System, November 2014.

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