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Published in:

Hague journal on the rule of law

Publication date:

2011

Document Version

Publisher's PDF, also known as Version of record

[Link to publication in Tilburg University Research Portal](#)

Citation for published version (APA):

Gramatikov, M. A., Barendrecht, J. M., & Verdonschot, J. H. (2011). Measuring the costs and quality of paths to justice: Contours of a methodology. *Hague journal on the rule of law*, 3(2), 349-379.

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Measuring the Costs and Quality of Paths to Justice: Contours of a Methodology¹

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

INTRODUCTION

Numerous studies have been carried out to explore how people respond to legal problems.² Such legal needs surveys typically explore which 'paths to justice' peo-

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¹ This study was facilitated in full by the Hague Institute for the Internationalisation of Law (Hiil) through the sponsoring of a research project titled Measuring Access to Justice in a Globalising World, The Hague Model of Access to Justice.

² American Bar Association, *Comprehensive Legal Needs Study* 1994, Hazel Genn and Sarah Beinart, *Paths to Justice: What People Do and Think about Going to Law* 1999, Hazel Genn and Alan Paterson, *Paths to Justice Scotland. What People in Scotland Do and Think about Going to Law* 2001; Ben C.J. van Velthoven and Marijke ter Voert, *Paths to Justice in the Netherlands. Looking for Signs*

ple experiencing legal problems pursue, by examining the steps people take in order to cope with a legal problem they faced.

Recently, various efforts were undertaken to measure the broad concept of the rule of law. Some focus on perceptions of particular dimensions of the rule of law (Freedom House,³ the World Justice Project Rule of Law Index,⁴ World Bank Governance Indicators⁵). Measurement encompasses areas like judicial independence, primacy of rule of law, property rights protection, equal treatment and antidiscrimination, accountability under the law, etc. Another approach to measure justice is to estimate the inputs in justice systems. What is invested in the justice system? How many officials are present? How many court houses, etc.?

However, there is a lacuna when it comes to measuring the actual perceptions of end users of the justice system. There is no coherent and systematic way to assess people's experiences, perceptions and attitudes when they seek access to justice. Little is known about the amount of time and money people actually spend when they take action to cope with their legal problems. What are the emotional costs they incur? How do they perceive the quality of the procedure and of the outcome? How are different procedures for similar problems performing and how do procedures for different problems compare? In short: can we make access to justice a quantifiable concept instead of a broad aspiration?

In this paper we suggest answers to the questions raised above and summarize the conceptual and methodological challenges of measuring the costs and quality of access to justice. Our experience derives from the developments of the research project entitled 'Measuring Access to Justice: The Hague Model of Access to Justice.'⁶ Barendrecht, Mulder et al. In their milestone paper 'How to Measure the Price and Quality of Access to Justice'⁷ have proposed an outline of a methodology for measuring the costs and quality of access to justice. Back in 2006 they defined the rationale behind the approach, raised numerous questions, and identified conceptual and methodological challenges. During the last years the research group and its network of experts addressed many of the outstanding challenges. More than twelve-pilot applications of the methodology were conducted to test,

of Social Exclusion 2004; Martin Gramatikov, *Multiple Justiciable Events in Bulgaria, Reaching Further: New Approaches to the Delivery of Legal Services* 2008, Pascoe Pleasence et al., *Causes of Action: Civil Law and Social Justice* 2004, Christine Coumarelos et al., *Justice Made to Measure: NSW Legal Needs Survey in Disadvantaged Areas* 2006, Ab Currie, 'A National Survey of the Civil Justice Problems of Low and Moderate Income Canadians', in: 13:3 *Int'l J. Legal Prof.* (2006), pp. 217-242.

³ <www.freedomhouse.org> (accessed 12 November 2010).

⁴ <www.worldjusticeproject.org/rule-of-law-index/> (accessed 4 March 2011).

⁵ <<http://info.worldbank.org/governance/wgi/index.asp>> (accessed 2 December 2010).

⁶ Up to date information about the project, companion papers, as well as a draft questionnaire are available on <www.measuringaccesstojustice.com> (accessed 7 June 2011).

⁷ Maurits Barendrecht et al., 'How to Measure the Price and Quality of Access to Justice?', 2006, on <<http://ssrn.com/abstract=949209>> (accessed 10 September 2010).

validate and refine the measurement instruments and overall methodological framework.⁸ In this paper we want to integrate the lessons learned, discuss the concepts in their dynamic development and formulate the current challenges for designing ways to measure the price (all costs) of access to justice and the quality of the 'goods' (processes and outcomes) that users of paths to justice aspire to receive.

The paper develops as follows. The core objective of the project 'Measuring Access to Justice: The Hague Model of Access to Justice' (below referred to as MA2J), which is to develop and test a methodology for measuring costs of paths to justice. The next paragraph 'Measuring Access to Justice' also discusses the relationship between the costs of paths to justice, and the quality (both in terms of procedures and outcomes) of paths to justice and the barriers to access to justice that the users may experience. It is assumed that individuals who experience problems and perceive them as legal problems have more or less pressing needs for justice. A need for justice is defined as '(...) need of a person for protection by outside norms or interventions that structure the conduct of another person that he may encounter or has a relationship with (...)'.⁹ For practical reasons the strategies to respond to justice needs will be measured from the moment when a person first takes step toward resolving the problem. Below we discuss the implications of this decision and the inferences we can draw regarding access to justice for those who did not decide to use the legal mechanisms for solving their problems.

We take a 'demand-oriented' approach. The focus is on the most urgent legal problems that citizens experience. Twelve categories of legal problems were identified by Barendrecht et al. that appear to be urgent in many, if not most, legal systems and locations.¹⁰ The assumption is that these categorizations are among the criteria that should guide choices about investments in institutions, regulations and procedures. Therefore, for the purpose of describing the accessibility of justice systems, these legal problems will set the agenda, and any methodology intended to measure access to justice will have to be suitable for assessing the mechanisms used to manage these problems (see paragraph 'Units of Analysis: Paths to Justice').

Barendrecht, Mulder et al. developed the theoretical model for measuring cost and quality of access to justice and set out its basic parameters.¹¹ Important decisions were achieved at this early level of conceptualization. Perhaps the most im-

⁸ Pilot studies have been conducted in the Netherlands, Bolivia, Bulgaria, Thailand, Poland, Australia, Cameroon, Senegal, Afghanistan, Canada and other countries.

⁹ Maurits Barendrecht et al., 'Priorities for the Justice System: Responding to the Most Urgent Legal Problems of Individuals', 2008, on <<http://ssrn.com/abstract=1090885>>, p. 6 (accessed 10 September 2010).

¹⁰ Barendrecht et al., 'Priorities for the Justice System'.

¹¹ Barendrecht et al., 'How to Measure the Price and Quality of Access to Justice?'.

portant direction for the research is the chosen 'user-based' perspective for measuring the access to justice (see 'Introduction'). A user is defined as the natural person who actively initiates and maintains the dispute resolution process. Another important decision of Barendrecht, Mulder et al. is that the access to justice will be measured through the experiences of a user on his 'path to justice.' But what is a path to justice, how comparable are paths within and between jurisdictions, at what point starts and ends a path? These issues will also be elaborated paragraph 'Units of Analysis: Paths to Justice.'

Paragraph 'Developing Indicators: What to Measure?' discusses which specific elements the methodology and measurement tools will try to assess when examining the costs and quality of access to justice. Different elements of costs could be effective barriers to access to justice in some locations. Lawyers' fees, other out-of-pocket expenses, lost opportunity costs and emotional costs could potentially dissuade a person from taking action to resolve the problem with legal mechanisms. Furthermore, even if a person decides to pursue these legal means, the piling costs associated with utilizing access to justice could effectively decrease the expected gain the user expects to acquire from their justice seeking behavior. Tangible and intangible costs of justice, however, are not the only categories that could hamper the justice process. Although theoretically all barriers could be seen as costs, our approach to access to justice distinguishes the quality of the procedure and quality of outcome as important properties of the processes that are perceived or designed to deliver justice.

Paragraph 'Methodology for Measuring Cost and Quality of Paths to Justice' elaborates on the challenges that lie ahead for empirical studies measuring the cost and quality of access to justice, and explores alternative methods of data collection. Paragraph 'Added Value of Measuring Access to Justice through the Users' Perspective' discusses the possible goals of and uses for the methodology and measurement tools: transparency of paths to justice; comparing the performance of paths to justice; gaining a better understanding of users' experiences; and gaining a better understanding of the barriers of access to justice. We assume, for instance, that users' perceptions on the quality of a procedure and the quality of an outcome are not randomly distributed around different levels of costs. Within our theoretical model one can hypothesize two opposite patterns of relationship. First, we could expect that with the increase of cost, the satisfaction with the quality of the procedure and the outcome will also increase. This paradigm places the justice procedures in the context of public services and leads to expectations that more resources will buy better services. The second rivalry hypothesis here is that users of justice expect little or no elasticity in the quality of procedure and outcome and covariance between costs and quality will be viewed as breaching the concept of justice. Measuring cost and quality of access to justice relies on the belief that these

indicators are not constants; rather, they vary by jurisdiction, procedure, type of legal problem, and user. With the developed methodological framework we want to capture this variation and its sources, and to then estimate statistics and parameters which will make transparent the barriers to justice. We show some results of two pilot studies to illustrate these points. The final paragraph concludes.

MEASURING ACCESS TO JUSTICE

The main aim of the outlined methodological framework is to reveal the cost and quality of access to justice from the perspective of the user of justice. An end user is a person who has already taken steps to solve her problems with mechanisms and procedures that are regulated with legal rules or take place in the 'shadow of the law.' Our methodological framework expects that the user has made assessments of his experiences with the cost of justice, the quality of the procedure, and the quality of the outcome. In other words, our measurement model uses three indicators of access to justice – costs of justice, quality of the procedure and satisfaction with the outcome (for a more detailed discussion see paragraph 'Developing Indicators: What to Measure?'). After completing a path to justice, people think about the costs incurred, the procedure and the outcome. In its essence the methodology asks the users of justice to reflect on their experiences and formulate a quantitative account of the particular path to justice.

Figure 1 visualizes the proposed model for measuring the costs and quality of access to justice. At the beginning is the pyramid of legal problems and needs for justice in the everyday life. Not every problem, however, is perceived as legal, and not every problem which has been seen as legal is acted upon within the formal justice system. Research on justiciable events consistently shows that only a tiny portion of the problems that are considered legal and non-trivial, are solved with a mechanism belonging to the formal legal system.¹² Therefore, the base of the pyramid (Point A, Figure 1) is rapidly decreasing due to lack of interest, apathy or concern about eventual barriers. Many different social and legal phenomena could act as barriers at this point. Often the intuitive cost-benefit analysis of the size of the problem, the required investments, and the expected return on investments returns a negative value which motivates inaction. As a result, the likelihood for action decreases significantly. Also, some problems solve themselves, lose their urgency or simply disappear as time goes.

Our measurement methodology does not focus directly on the pyramid of legal problems and justice needs; the 'justiciable event' methodology is significantly better equipped to analyze pyramid's size and shape. While our goal is to measure

¹² See above n. 2.

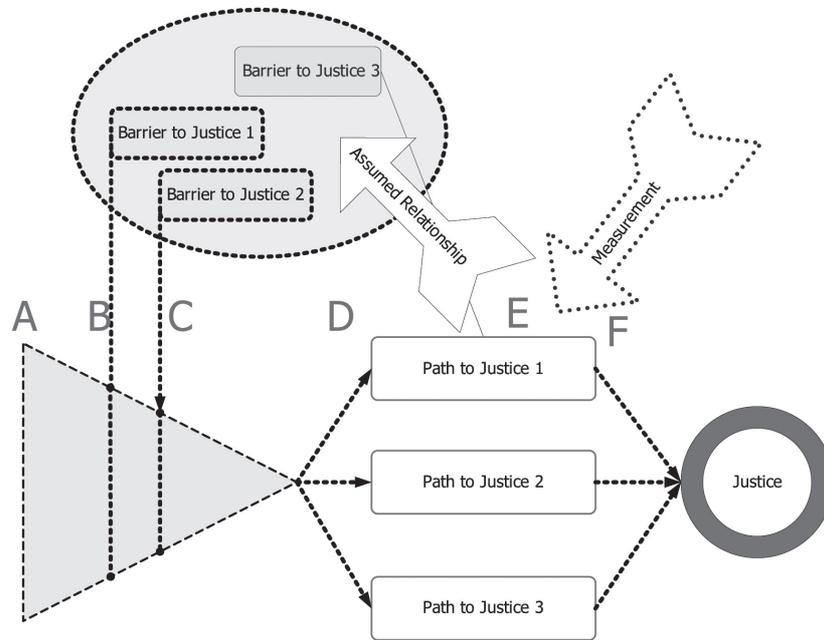


Figure 1. Model of access to justice

the experiences with costs and quality of access to justice, we direct the research focus on the next stage of the model – the paths to justice. In fact, paths to justice are the primary units of analysis in our research design (for conceptual definitions of paths to justice see paragraph ‘Units of Analysis: Paths to Justice’). After experiencing a legal problem the users could select different strategies and taking on a path to justice is one of the possibilities. From a neutral point of view the person with a legal problem will normally want to solve her problem although the real life is much more complex. The term path to justice has normative connotations as well. It presupposes that justice can and will be delivered. Although this could not be true we term the process as path to justice because the whole procedure is triggered by a need for justice. Subjectively and objectively it is difficult and often impossible to tell justice from injustice. In order to avoid introduction of such a volatile concept in our measurement methodology we will not analyze the extent to which the specific process leads to just outcomes. The outcome is described as the perceived result of the procedure (see paragraph ‘The quality of outcomes’). Whether it is just or not we do not know. What we can estimate is how the users perceive the quality of the received outcome.

As we will see further in paragraph ‘Units of Analysis: Paths to Justice’, paths to justice could be classified in discrete categories using two criteria – type of legal

problem and type of procedure. In Figure 1 both interpretations can be fitted – multiple legal problems follow a path to justice, which varies in terms of process or a single legal problem could be solved with three to four legal processes (or in the case of negotiations – a process taking place in the ‘shadow of the law’). Below we will discuss in detail our definitions of when a path to justice begins and ends. What is important here is to reiterate that the actual measurement concentrates on the experiences with costs and quality of procedure and quality of the outcome that users experience.

UNITS OF ANALYSIS: PATHS TO JUSTICE

Path to justice is a crucially important concept for the MA2J methodology. In this section we relate paths to justice to legal problems and justice needs, define paths to justice, and elaborate on the beginning and the end points that demarcate a path to justice.

LEGAL PROBLEMS AND JUSTICE NEEDS

First of all, MA2J aspires to measure the most pressing and urgent social needs which are perceived as legal and are then transformed into justice needs. Barendrecht et al. call for adopting a ‘demand-oriented’ or ‘empowerment’ perspective on legal needs and needs for justice: ‘The focus should be more on what [legal] institutions will accomplish for the population.’¹³ From this perspective the authors use six analytical methods to discover a universal set of legal problems and the justice needs related to them. A legal problem is defined as ‘a situation in which a person may develop a need for protection by outside norms or interventions that structure the conduct of another person that he may encounter or has a relationship with (justice need).’ Barendrecht et al. compiled a list of twelve most frequent and pressing legal needs (see Table 1). The list depicts a framework of the social needs that the legal systems face and thus structures their priorities from the perspectives of demand-orientation.

Once the legal problems and the corresponding justice needs that we want to measure are identified, we can define and operationalize the paths to justice that are available to meet this demand. This is an important part of the methodology since paths to justice are defined as units of analysis in the methodology for measuring costs and quality of justice. Choosing paths to justice as units of analysis has three implications. First, the methodology should be calibrated according to the properties of the selected path to justice. For instance the population of users as

¹³ Barendrecht et al., ‘How to Measure the Price and Quality of Access to Justice?’

Table 1. Most frequent and pressing legal needs (adapted from Barendrecht et al. 'Priorities for the Justice System', 2008, p. 26)

Category	Examples	Threats	N top 10 (max = 8)	N of Sever. Indic.	N Count. Spec. Courts (max= 16)	Value Interest at Stake	Costs Self Prot.	Value SI.
1 Subsistence needs	Problems regarding access to basic survival needs such as food, water, heating, urgent health care.	Scarcity	4	0	6	5	-	-
2 Basic personal security	Crimes related to the person. Unfair detention. Personal injury.	Aggression by outside groups, robbery, detention, negligence	6	4	16	5	5 (3)	5
3 Property rights protection	Crimes related to property. Registration of property. Property disputes. Expropriation.	Robbery, thieves, claims on property by others, expropriation by government or private developers.	7	0	4	4	5	5
4 Identity issues and documents	Acknowledgement of identity and nationality.	Bureaucratic authorities, individuals opposing registration	0	0	0	4	5	5
5 Problems in land use relationships	Eviction. Problems in relation to land use or house leases.	Landowner asking high share/rent or eviction	7	3	4	3/4	4	4
6 Problems in employment relationships	Dismissal. Employment conditions. Safety in the workplace.	Employer offering low wage, bad labor conditions, unfair dismissal.	8	4	12	4	4	3/4
7 Problems in family relationships	Divorce. Domestic violence. Exploitation of women or children.	Domestic violence, unfair treatment/exploitation of women and children	8	4	10	4	4	4

Table 1. Continued.

<i>Category</i>	<i>Examples</i>	<i>Threats</i>	<i>N top 10 (max = 8)</i>	<i>N of Sever: Indic.</i>	<i>N Count. Spec. Courts (max= 16)</i>	<i>Value Interest at Stake</i>	<i>Costs Self Prot.</i>	<i>Value SI.</i>
8 Problems in neighbor relationships	Disturbances. Environmental damage.	Disturbances, environmental damage, neighbor violence	4	0	1	3	4	4
9 Problems with sellers of goods/services	Issues regarding quality of goods or services.	Fraud, low quality goods.	8	0	0	1/2	3	1/2
10 Business problems	Problems with setting up businesses. Unfair regulation. Unfair taxation. Problems between participants. Problems with suppliers.	Untrustworthy or problematic business partners, government exploitation, extortion by criminals, bureaucracy	2	0	6	4	4	4/5
11 Debt problems	Unpaid debts.	Debts not paid	7	0	0	2	3	1/2
12 Problems with financial services	Savings. Insurance. Pensions.	Fraud, conflicts about performance.	0	0	1	3	3	3/4

well as the sample frame will be determined by the specifics of the selected path to justice. Next, the scope and extent of possible generalizations depend on the units of analysis. This means that inferences on the paths will be more precise than inferences on other measured phenomena. Third, the selection of paths to justice as units of analysis requires sufficient conceptualization of the paths in order to avoid comparison of ‘apples with oranges’ (for more on the comparability of paths see paragraph ‘Quality of Procedure’).

DEFINITION OF PATH TO JUSTICE

The term ‘path to justice’ has rather sociological than legal connotation. It is not used in substantive and procedural legal provisions and we cannot derive its meaning through normative legal analysis. Itself the term ‘path’ suggests less uniformity and abundance of variation within certain intervals. Our definition of path to justice is simple: *a commonly applied process which users address in order to cope with their legal problem.*¹⁴ Under this definition a process is defined in a broad sense. A path to justice could be adjudication or arbitration but also a negotiation since it takes place because the parties use it to cope with a legal problem. They may or may not expect that the legal system acknowledges and enforces their individual rights and obligations. In such a way the measurement methodology recognizes that dispute resolution mechanisms such as negotiations, conciliations, mediation etc. take place in the ‘shadow of the law.’ Measuring these informal mechanisms and comparing them with the structured and regulated procedures yields valuable information about the decisions that people take when a legal problem has to be resolved. For instance, the differences between the costs of formal and informal paths to justice could be interpreted as the revealed preferences toward legal certainty. Here, we assume that the structured paths are more expensive but guarantee more legal certainty. A logical extension of the assumption is that in jurisdictions with functioning legal systems the informal paths will provide more certainty due to stronger ‘shadow of the law’ and as a result people will pay less for solving their legal problems.

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

According to our definition *a path to justice begins when a person takes steps to resolve his/her legal problem through external norms or intervention.* Different actions can mark the beginning of a path to justice – search for information, contacting

¹⁴Martin Gramatikov et al., *A Handbook for Measuring the Costs and Quality of Access to Justice* 2010.

a lawyer or the other party, referring the problem to public authority etc. Other definitions of beginning of a path are possible but for the sake of clarity we rely on externally observable action which is identifiable and clear for the respondent.

Definition of an end of a path to justice is significantly more difficult. In a world where every social artifact is amenable to objective measuring we could claim that the moment when justice is delivered, or when the existing problem is solved should mark the end of a path to justice. In reality the moment of reaching justice is largely a function of subjective valuation. In order to substitute such a subjective assessment with more objective criteria *we define the end of a path as the moment of a final decision by a neutral, joint agreement of the parties, or an end to the process because one of the parties quits the process.* This definition, which closely follows the concepts used in legal needs research, emphasizes the actual end of a pursuit to solve a legal problem. Unlike some alternative approaches, we expect that users of justice are capable to recognize and evaluate this moment. The approach recognizes that not every claim for justice is valid as well as that inevitably valid claims are rejected. Instead of asking the users of justice to assess the functioning of the legal mechanisms, our approach relies on their assessment of the procedure and the outcome of the procedure.

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

DEVELOPING INDICATORS: WHAT TO MEASURE?

Three basic indicators for accessibility of justice have been defined: Costs, Quality of Procedure and Quality of Outcome. For each of the three constructs (indicators), a literature review has been undertaken in order to identify the elements

of costs,¹⁵ procedural quality,¹⁶ and outcome quality¹⁷ that users of paths to justice are likely to see as important. These papers looked for criteria that reflect principles proposed in legal theory and enacted in legal systems, but are also confirmed in empirical research as valid constructs, and as elements that users of processes find important. Then, the criteria were operationalized in questions that can be presented to users (in survey questionnaires, focus groups, and other methods, see paragraph 'Methodology for measuring Cost and Quality of Paths to Justice').

Costs of travelling a path to justice

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

The costs of a procedure are defined as the monetary expenses for obtaining an outcome, as well as categories of opportunity and intangible costs. Out-of-pocket costs are all monetary outlays made by the divorcees in order to reach an outcome. Most often, the literature on costs of justice envisages legal costs and legal fees.¹⁸ However, in our methodology, we include other out-of-pocket expenses, such as money spent for travel, experts, witnesses, search and collection of information, translation and communication.¹⁹

Opportunity costs are defined as non-monetary costs for which markets exist and whose shadow costs could be estimated. Thus, opportunity costs are expenses incurred in units other than money, but which could be monetized. The most frequent example of opportunity costs is the personal time invested into solving the dispute. Other examples include the numerous instances of foregone earnings caused by the pending procedure. The third category of costs on paths to justice are intangible costs.²⁰ The main difference between opportunity and

¹⁵ Martin Gramatikov, 'A Framework for Measuring the Costs of Access to Justice', in: 2 *J. Juris.* (2008), p. 111.

¹⁶ Laura Klaming and Ivo Giesen, 'Access to Justice: The Quality of the Procedure', 2008, on <<http://ssrn.com/abstract=1091105>> (accessed 15 September 2010).

¹⁷ Jin Ho Verdonschot et al., 'Measuring Access to Justice: The Quality of Outcomes', 2008, on <<http://ssrn.com/abstract=1298917>> (accessed 10 September 2010).

¹⁸ Gramatikov, 'A Framework for Measuring the Costs of Access to Justice', in: *The Journal Jurisprudence* (2009), pp. 111-147; David M. Trubek et al., 'The Costs of Ordinary Litigation', in: 31 *UCLA Law Review* (1983) p. 72.

¹⁹ Gramatikov et al., *A Handbook for Measuring the Costs and Quality of Access to Justice*.

²⁰ Mark A Cohen, *The Costs of Crime and Justice* 2005, Paul Dolan and Tessa Peasgood, 'Estimating the Economic and Social Costs of Crime', in: 47 *British Journal of Criminology* (2007), pp. 121-132.

intangible costs is that the latter are much more difficult to assess and quantify. In our methodology, we focus on three instances of intangible costs which are assumed to most intensely impact the accessibility of paths to justice – stress, negative emotions and damage to relationships.

Quality of procedure

With respect to the quality of procedures, several different theoretical frameworks can be used, such as philosophical and economic perspectives on ‘procedural goods’ and elements of procedural values embedded within legal procedure rules. However, in the field of social psychology there has been an extensive amount of research analyzing how people experience procedures. The scope of this research is broad and has covered most, if not all, elements of ‘procedural goods’ suggested by other theoretical approaches.²¹ The majority of these studies suggest that people care deeply about the procedure used to obtain an outcome, maybe even more than about the outcome itself. These investigations of procedural justice have consistently demonstrated the importance that people associate with the quality of the procedure in different environments and settings. As the vast majority of research on procedural justice comes from the field of social psychology, the theoretical and empirical framework of social psychology is used in order to define indicators for users’ evaluations of the quality of procedures. The quality of procedures is broken down into people’s evaluations of procedural, interpersonal, and informational justice. Procedural justice refers to more structural aspects of a procedure including aspects such as voice, neutrality, trustworthiness, consistency, and accuracy. Interpersonal justice is defined as the degree to which people are treated with politeness and respect, and informational justice refers to explanations provided to people. Empirical studies have also demonstrated that procedures in which people are treated with respect and politeness and in which the rationales of procedures and decisions are explained result in more favorable justice perceptions. In contrast, any perceived violation of procedural, interpersonal or informational justice has a negative impact on fairness evaluations.

Because we measure paths to justice and not per se procedures with a clear beginning and end, isolating the quality of procedures may be difficult. People may not distinguish interactions with actors who are part of the procedure from interactions with other actors. For instance, to people travelling a path to justice, their lawyer may be very much part of it and interactions with a lawyer may have a strong effect on their perception of the quality of the procedure. However, it may be possible to control for this effect by taking the presence or absence of lawyers or other advisers into account. The quality of the procedure may also be influenced by the conduct of the opposing party, and many other confounding

²¹ Klaming and Giesen, ‘Access to Justice: The Quality of the Procedure’.

variables. Whether the procedural quality of a path to justice can be evaluated separately and in a meaningful way remains to be seen.

The quality of outcomes

Measuring the quality of outcomes brings us to a problem that was addressed earlier. It seems safe to assume that we can objectively distinguish a 'right' outcome from a 'wrong' outcome and that we also have an objective idea of the magnitude of that error. There are many different ways in which 'justness' or 'fairness' of what people get out of procedures can be evaluated. Justice theories offer competing criteria. Verdonschot et al. identify seven justice principles²² which can be used as indicators for assessing the quality of the outcomes of paths to justice.²³ These seven principles are used as a starting point. From a practical point of view, however, it is difficult to imagine an analytical framework in which all seven of them participate simultaneously. First, people are only boundedly rational and tend to sift through the many possible decisional sources. In that respect a framework of seven fairly complex concepts, some of which are multidimensional, is unlikely to be applied when people reflect on their experiences with paths to justice. Second, some of the concepts are difficult to distinguish decisively. For instance, restorative, corrective, retributive, and transformative justice share many similarities. There is no empirical evidence to shed light on the extent to which disputants actually make a distinction between these principles when assessing the quality of outcomes. Third, we may ask whether the extended list of justice principles is universally applicable to all, or at least most, legal processes.

In order to simplify the decisional model of assessing the quality of the outcomes of justice resolution processes we condense the seven justice principles into four dimensions of the quality of the outcome – distributive justice, restorative justice, functionality, and transparency.

Distributive justice reflects the perceived fairness of the quantitative split of the contested value. People embark on paths to justice seeking to receive the disputed value in whole or partially. The other party usually has similar interests and has its counter-claims. An outcome of high quality makes the party believe that the distribution was fair and just. Fair distribution is not equivalent to favorable outcome. A well-designed dispute resolution process will make the disputants recognize that it is distributively just even when the outcome is not favorable for that particular party.

²²The eight legal principles proposed as indicators are: distributive justice, restorative justice, corrective justice, retributive justice, transformative justice, legal pragmatism, and formal justice.

²³Verdonschot et al., 'Measuring Access to Justice: The Quality of Outcomes'.

Table 2. Summary of the concepts of costs of justice, quality of the procedure and quality of the outcome

<i>Costs</i>	<i>Quality of the procedure</i>	<i>Quality of the outcome</i>
Out of pocket expenses (legal costs, fees, travel costs, etc.)	Procedural justice (voice, neutrality, trustworthiness, consistency, accuracy)	Distributive justice (equality, equality and need)
Opportunity costs (time for travel, waiting, collecting evidence, instructing lawyers; depreciation of assets; lost opportunities)	Interpersonal justice (respect, politeness)	Restorative justice (compensation of the pecuniary and non-pecuniary damages),
Intangible costs (stress, negative emotions and damage to important relationships)	Informational justice (explanations of process and outcomes)	Functionality (extent to which the outcome solves the problem)
		Transparency (motivation of the outcome and extent to which the outcome can be compared to similar fact patterns)

Restorative justice is the dimension of the outcome which rectifies the damage or loss suffered by the legal problem. In some types of legal problems the restorative function of the outcome is more tangible. Legal disputes over personal injury or unlawful dismissal are good examples of the loss and damages which can be incurred. What the disputant expects is that the outcome has to provide remedy and restore the damage. Corrective justice and retributive justice are concepts highly similar to restorative justice and for the sake of clarity can be merged together.

Transformative justice and legal pragmatism emphasize the extent to which the outcome solves the problem. Together the two perspectives are combined into one dimension – *functionality*. Whereas the distributive and restorative justice facets probe internal characteristics of the outcome, the functionality is interested with its external effect. It attempts to answer the question – to what extent the outcome solves the underlying problem. Even if someone receives an outcome that is distributively and restoratively fair, it is possible that this outcome does (not?) make the necessary change in the real world. It is possible that the outcome comes too late or cannot be enforced. Thus, the functionality is a dimension of the outcome which measures the practical consequences of the results of the dispute resolution process.

Informational justice is the extent to which the outcome has been motivated. People want to know why a dispute resolution process produces a particular outcome. An outcome of high quality has to be transparent, meaning it has to be comparable to the outcome of similar procedures; people must be able to ascertain this equivalence; and the outcome has been comprehensively explained. Formal justice and informational justice concern cognitive features of the outcome. Merging them together we define the transparency dimension. Its formal justice part is concerned with the extent to which the party perceives that the dispute has been resolved in a similar way as other comparable disputes between comparable parties. It is difficult to have an objective measure of formal justice and therefore the parties are asked about the perceived level of equality to comparable situations.

METHODOLOGY FOR MEASURING COST AND QUALITY OF PATHS TO JUSTICE

Measurement of cost and quality of access to justice from the users' perspective requires vigorous empirical legal research. In paragraphs 'Units of Analysis: Paths to Justice' and 'Developing Indicators: What to Measure?' we discussed the units of analysis and the indicators that we use to monitor access to justice. Rarely one can find available data sources containing users' perceptions about costs of justice and their evaluation of the quality of the procedures and their outcomes. Therefore our methodological framework presumes that collection of primary data is an indispensable step in the measurement methodology.²⁴

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

In relation to measuring the costs and quality of paths to justice, a set of quantitative and qualitative data collection methods have to be considered. Cross sectional surveys, diary studies, and focus groups are the methods deemed to be suitable for collecting perceptions-based data from users of justice. The positive effect of using multiple methods is that the triangulation could greatly improve the reliability of the data when different methods are used. Our methodological framework, however, recognizes that in certain environments the researchers will

²⁴On the distinction between primary and secondary sources see Jody Zall Kusek and Ray C. Rist, *A Handbook for Development Practitioners: Ten Steps to Results-Based Monitoring and Data Evaluation* 2004.

be bound for only one of the methods. Different reasons could back this choice, such as available resources, level of specification of the units of analysis, access to users of justice etc. Use of differing data collection methods inevitably increases the risk of unreliable comparisons. We will address this risk in paragraph ‘Comparing Paths to Justice.’

Data collection methods

Surveys and focus groups are well known and frequently used methods for data collection in empirical legal research. Our methodological framework does not impose any non-standard meaning of the two methods. With regard to the surveys, alternative modes of administration of the research instrument are possible. Several data collection options are possible: in person interviews, phone interviews, mailed questionnaires and web based questionnaires. Selection of a particular mode is largely dependent on the specifics of the particular environment where the data is collected. Accessibility of the respondents is the most important factor that should be considered before selecting a strategy.²⁵

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

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

²⁵ Martin Gramatikov, ‘Methodological Challenges in Measuring Cost and Quality of Access to Justice’, 2007, on <<http://ssrn.com/abstract=1099392>>.

identification of possible interaction between the effect of attrition and measured indicators should be put in place.

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

Samples

An inevitable challenge in research on civil and criminal justice is the often witnessed lack of, or inaccessibility of, relevant data. For our methodological framework this challenge translates into reduced abilities for the construction of a systematic random sample. When the basic parameters of the population of interest are unknown, the researcher should use less rigid samples such as convenience or snow-balling samples. Intrinsic challenge of these designs is the lesser control against different forms of bias.

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

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

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

Response items/scales

Two of our basic indicators of access to justice (quality of the procedure and quality of the outcome) do not have natural units of measurement. People do not normally think 'I'm satisfied with my procedure at 66 points' or 'my satisfaction with the outcome is at A level.' To make the concepts measurable, we use a 5-point Likert scale.

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

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

Indexes

In our theoretical model the three indicators of access to justice are not one-dimensional constructs. As we saw in paragraph 'Developing Indicators: What to Measure?' costs of justice, quality of the procedure, and quality of the outcome are multi-facet categories. Their different dimensions are measured with one or more variables. A fundamental question at the data analysis stage is how to treat

the multiple components that belong to one of the indicators. The question is of significant practical importance – the outcome of the measurement is largely dependent on the adopted strategy.

Interpreting multiple items that measure the same construct could be difficult and unintuitive. For instance our research instrument for the quantitative interviews has more than twenty items measuring the quality of the procedure.²⁶ Informing the policy makers or the donor community regarding the quality of procedure with such a large set of variables could be awkward. Instead, we should contemplate construction of an index which is the aggregate measure of the indicator. The theory behind MA2J presupposes three distinct indexes (costs of justice, quality of the outcome, and quality of the procedure). It is also possible to aggregate further the three sub-indexes into a general index encompassing all indicators.

What would be the pros and cons of the two options? One all-inclusive index is more appealing in terms of its ability to directly inform the general research question – how people assess their access to justice. If access to justice varies on some interval (let's say from non-existing to total access) than there should be some indicator to tell the actual level. A single index, if valid and reliable, could play the role of a compass on the map of access to justice. However, such an index assumes that the researchers have sufficient knowledge about the compatibility of its ingredients. For instance, if we aggregate costs and quality of outcome, do we suppose that with the increase of cost also satisfaction with the outcome will increase? Such assumptions on the covariance of our indicators are difficult to ground theoretically. The example shows how sensible it is to create an index that covers the three indicators without sufficient deliberation of the model and to test it with empirical data.

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

Further improvements of the methodology

How can we improve the research design and what would be the pros and cons of such improvement? We agree that the perceptions and assessments of the users are indispensable for measurement of access to justice. Just as many other legal phe-

²⁶ See the latest versions of the measurement instruments on <www.measuringaccesstojustice.com/index.php/main-parent-page/toolkit/> (accessed 9 June 2011).

nomena we are facing practical limitations in our quest to discover the objective truth. Certainly direct observations on the barriers to justice from a users' perspective is not impossible but looks unfeasible, especially if the goal is to collect data in numerous jurisdictions. Measuring at point A, Figure 1 where the social problems are recognized as legal problems requires adoption of the *justiciable events* approach. The downside here is clear – significant monetary resources, time and expertise are required to draw large samples in which the problems can be detected with appropriate level of confidence. Next, research could focus on point D, when the recognized problems enter a specific path to justice. Filing a lawsuit, starting a negotiation or complaining to public authority leaves certain traces. In fact, in many jurisdictions it will be almost impossible to get a grip on the entire population that reached this phase. Another weakness of measuring with cross-sectional designs at point A or point D is that the results do not account for the fact that many users proceed further from that point and their experience is important part of the access to justice paradigm.

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

ADDED VALUE OF MEASURING ACCESS TO JUSTICE THROUGH THE USERS' PERSPECTIVE

Transparency of the paths to justice

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

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

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

Comparing paths to justice

To what extent could different paths be compared and can we compare paths to justice from different jurisdictions? We will look at the example of comparing two different paths to justice from Bolivia and The Netherlands.²⁷ To simplify the comparison we focus on the perceptions about the procedural quality. As one can see in Figure 2 there is a significant variation in satisfaction with procedure in both measured paths. On average the Dutch procedure is rated slightly lower but the difference is not statistically significant.

What information could be derived from the comparison in Figure 2 and to what extent it can be generalized? Can we say that the Dutch legal system performs at lower level than the Bolivian? Or we should limit our conclusions to the two procedures. After all in Bolivia we measure the performance of administrative agency which provides public service whereas in The Netherlands we investigated the outcomes of voluntary adjudication of consumer problems. The nominal

²⁷In Bolivia the sample consisted of individuals who interacted with executive authorities or courts with regards to issuance, amendment or revocation of ID documents. A sample of individuals who used a consumer protection dispute resolution processes (*Geschillencommissie*) were asked to think about their experiences with justice.

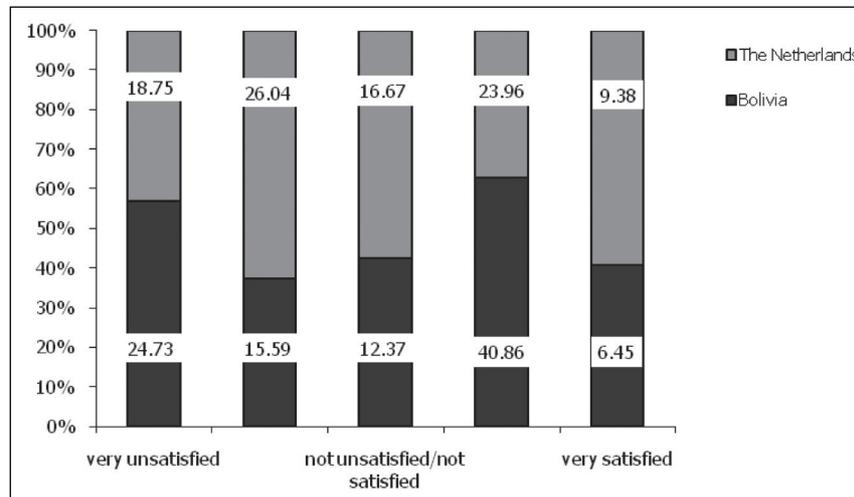


Figure 2. Satisfaction with the procedure

value of the values at stake is also different. In the Dutch pilot the users protect much more significant monetary interest.

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

To what extent a discrete procedure reflects the status of the overall system to which it belongs? In the case of the Dutch *Geschillencommissie* how certain could we be that these levels of costs and satisfaction with the procedure will be anywhere near to another legal procedure or intervention? Legal institutions as all other social institutions are deeply embedded in the social context.²⁸ In the case of the legal institutions there is however even stronger bond between the different parts of the legal system. The system of normative regulations, body of case law, legal culture and legal education provide certain homogeneity of the legal institutions. It is highly unlikely that different elements of the broad legal systems develop at heterogeneous directions and speed. However we do not know how strong the internal consistency of the legal system is. Policies and projects could impact positively or negatively certain part of the system without even targeting others.

²⁸ Mark Granovetter, 'Economic Action and Social Structure: The Problem of Embeddedness', in: 91:3 *American Journal of Sociology* (1985), pp. 481-510.

Hence we could ask – is it possible certain dimension of the legal system to develop at different speed as compared with another part or the rest of the system. Projects like the World Bank ‘Doing Business’²⁹ insist that it is possible that certain legal procedures could be significantly improved and illustrate this thesis with examples with re-engineered procedures for delivery of public services.

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

Better understanding of users’ experiences

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

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

Understanding the barriers to justice

In this sub-section of the article we reiterate and demonstrate how investigating access to justice through measuring paths to justice adds value to the existing body

²⁹ See <www.doingbusiness.org> (accessed 5 February 2011).

of knowledge and drives further the research and policy making in the field. Our point is that perceptions, attitudes and evaluations of users of justice have impact on access to justice. This relationship is not adequately captured by existing methodologies for studying access to justice. Next, we think that the choices that people make regarding which specific path to justice to take are informative about the existing barriers to justice. Third, when measuring paths to justice and making inferences on accessibility of justice, the methodological framework is mapping three pillars of quality of the access – costs, quality of the procedure and quality of the outcome. From the reverse perspective this should mean that perceived gaps in the costs and quality of access to justice as experienced by the users of justice indicates systemic failures.

We do not measure the experiences of those who did not embark on a path to justice due to conscious choice or under the pressure of a certain barrier. However, we measure access to justice through collecting data on the cost, quality of the procedure and quality of the outcome of dispute resolution mechanisms. There is a strong relation between access to justice as a social fact and the legal system which epitomizes institutions, rules and procedures. When people make decisions on how to solve legal problem they heavily use the diffused social knowledge on cost, quality of the procedure and quality of outcome of the outcomes. We assume that if dispute resolution mechanisms are perceived as expensive then the perceived costs will mount as barriers to justice.

We could also speculate on the relationship between quality of the procedure and quality of the outcome, on the one hand, and access to justice, on the other. Researchers of procedural quality claim that overall satisfaction with the procedure is more influenced by the perceived properties of the procedure.³⁰ In this framework, if the process for solving the legal problem is regarded as expensive or substandard than these perceptions will negatively impact the access of others who have similar problems. The quality of the outcome is expected to have similar effect on accessibility of justice. If the person who needs justice knows that the given mechanism will not fully restore or compensate the lost interest, than the perceived probability of failure will play the role of a barrier. The more the claimant believes that the outcome will be of ‘high quality’, the higher the likelihood that he enters a path to justice.

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

In this sub-section we illustrate the descriptive and explanatory power of the methodological framework. For the purpose we use data from two pilot studies

³⁰Tom R. Tyler, ‘What is Procedural Justice?: Criteria Used by Citizens to Assess the Fairness of Legal Procedures’, in: 22:1 *Law & Soc’y Rev.* (1988), pp. 103, 128; Tom R. Tyler, *Why People Obey the Law* 2006.

in Bolivia and Netherlands. Samples of 206 and 141 users of justice respectively in the Bolivian and the Dutch studies took part in the survey. The former sample consisted of individuals who have recently received an outcome of a procedure for obtaining birth certificate or ID document. The sample itself contains two sub-groups – a larger group of 186 persons used short and standard administrative procedure and a group of twenty who invoked a court procedure to solve their problems. In the Netherlands the researchers sent out invitations to approximately five hundred individuals who reported a vehicle related consumer problem to the *Geschillencommissie*³¹ and received an outcome within twelve months before the interview. The Dutch sample is more homogeneous in terms of variance in the legal problem and procedure as compared with the Bolivian study. A notable difference is that the Dutch users were involved in a dispute with a service or goods provider whereas the Bolivian users have travelled a path in which there is no visible other party. There are other differences between the two pilot studies, but these will be discussed in detail in a different paper. Here our goal is to demonstrate certain capabilities of the methodology to inform on the access to justice.

In both pilot studies we asked users of justice about the out-of-pocket expenses they made on their path to justice. According to our definition of a path (see paragraph 'Units of Analysis: Paths to Justice') we recorded monetary outlays made since the moment the person took active steps to resolve the problem until she received an outcome from the neutral third party. Due to the differences in the problems and the legal procedures we used differing costs categories, item scales³² and data collection modes.³³

In order to compute the total monetary cost of the investigated paths to justice we combined the costs from the categorical scale categories. Costs of justice were measured in ordinal categories because of the expectation that the users will be somewhat less cognizant about their actual expenditures (see paragraph 'Response items/scales'). Combining ordinal categories inevitably results in uncertainty in the aggregated variable but in this case we are interested to discover the share of the different cost categories in the total monetary outlays that the respondents in the two pilot studies reported. Measuring costs at interval level, however, will be even more challenging since normally the users will only be able to report with

³¹ Consumer dispute commission.

³² For instance the scale of the money-related questions in Bolivia were coded as follows: 1 (less than 50 Boliviano), 2 (51Bs-100Bs), 3 (101Bs-200Bs), 4 (201Bs-500Bs), 5 (501Bs-100Bs), 6 (1001Bs-4000Bs) and 7 'More than 4000 Bs.' In the Dutch pilot study the value of 1 represents monetary value of up to € 99, 2 (€ 100-€ 199), 3 (€ 200-€ 499), 4 (€ 500-€ 999) and 5 'More than 1000.'

³³ Respondents in Bolivia were interviewed face-to-face in the lobbies of public offices after they have received their documents. In the Dutch survey a web based questionnaire was distributed to the willing participants.

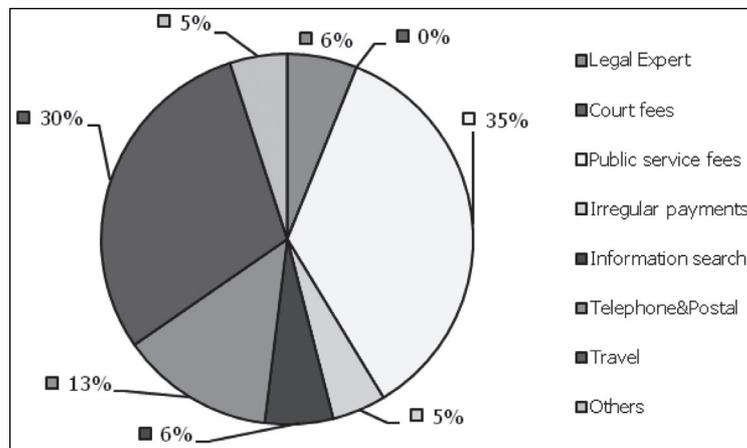


Figure 3. Cost of obtaining birth certificate and ID documents in Bolivia (administrative procedure)

some level of approximation the monetary costs. Opportunity costs as well as emotional costs do not have a natural measurement scale and cannot be added to the total cost of the path to justice without transformations in which the subjective judgment of the researcher induces uncertainty. Therefore measuring all cost categories with ordinal items is deemed as more appropriated and reliable approach.

For each cost category we estimated the individual cost through simple weighting of the responses. We weighted each response with an incrementing integer which corresponds to the answering scale.³⁴ After computing the weighted cost of the procedure we graphed the percentage with which each cost category participates in the total monetary cost of the procedure (see Figure 3 and Figure 5).

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

Numerous conclusions could be drawn with regard to accessibility of the administrative procedure for obtaining birth certificates and ID documents. We could assume that the major barriers for solving the documents problem are the

³⁴In Bolivia the weight of zero is applied to respondents who report no expenses in the particular category, 1 to those who pair up to 50 Bs and so forth.

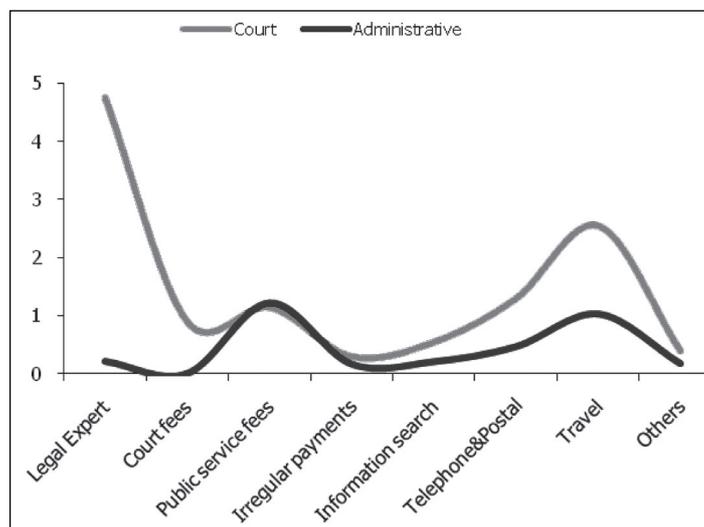


Figure 4. Average costs of court and administrative procedure

distance of public offices from the communities and existing service fees. If we compare the administrative procedure to the court procedure (see Figure 4) we see that the former is significantly less costly.³⁵ Specifically in the cost categories of legal fees, travel and communications the court procedure requires significantly more monetary resources.

Above we analyzed and compared the costs of two paths to justice. In the Introduction we discussed that one of the goals of the methodological framework is to provide comparable data on procedures in different jurisdictions. Figure 5 shows the distribution of costs experienced by the users of the studied consumer dispute path in the Netherlands. Straightforward comparison with the Bolivian pilot study would be difficult because of the differences in the used cost categories. More than half of the expenses of those who filed with the *Geschillencommissie* were spent on contacting the other party – the supplier of goods or services. In Bolivia the active party does not try to resolve a dispute but to exercise a right or to change the legal situation. Therefore the category of ‘contacting the other party’ is not applicable to the measured path to justice. Different cost categories and varying levels of coding the observed variables make the direct comparisons between procedures in two different countries difficult. Moreover the procedures expose significantly different needs for justice caused by the underlying legal problems.

Distribution of costs among the specified costs categories is informative but when considering the accessibility of the procedure we have to take into account

³⁵T test for means difference $t = -11,36, = ,000$.

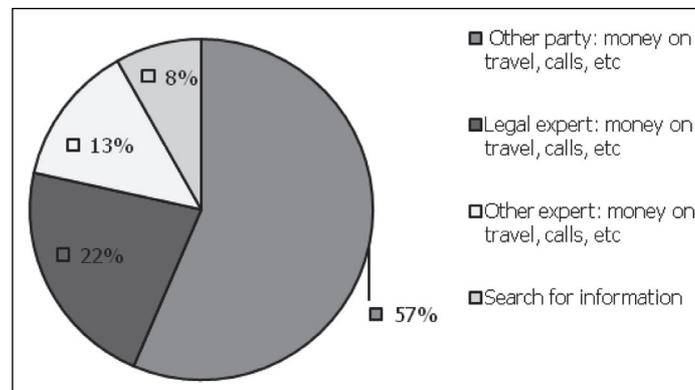


Figure 5. Cost of solving auto related consumer disputes in the Netherlands

the actual reported expenses. For instance, the Dutch users of justice spent large part of the resources for contacting the other party. If we look at the reported expenses, however, we see that half of the respondents made expenses in this category of up to € 99, 20 percent spent between € 100 and € 199 and 9 percent between 500 and € 999. There is a positive correlation between the values at stake and the monetary outlays made for contacting the other party (Spearman's rho = .37; $p = .00$). Similarly in Bolivia about 68 percent of the respondents report that they spent less than 50 Bs for the most burdensome cost category, 18.3 percent spent between 51 and 100 Bs.³⁶

Barendrecht, Mulder et al. discussed the feasibility for comparing costs of paths to justice after adjusting the measurement to the actual income of the respondents or to the price levels in the respective countries.³⁷ Finding the ratio between indicators of personal wealth and the experienced cost of justice will reveal the extent to which justice related expenses act as barriers. Possible alternative approach would be to assess the mean or median cost of path to justice against aggregated measure such as the Gross domestic product per capita or other indicator of standard of living.

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

Perceptions on quality of the procedure and the outcome could inform on the access to justice with the language of uncertainty and risk. As we shall see in Fig-

³⁶Small fraction of 8 percent reported no out-of-pocket expenses in this category but we must be cautious with this group because normatively every user must pay the service fee in order to obtain an outcome. A large proportion from this group reports that the request for service was rejected which hints that those who paid nothing actually did not travel the same path to justice.

³⁷Barendrecht et al., 'How to Measure the Price and Quality of Access to Justice?'

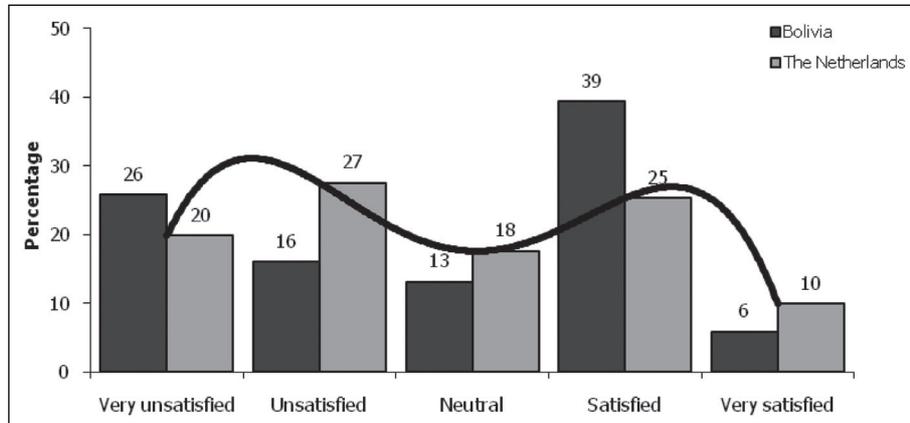


Figure 6. Comparison satisfaction with procedure

ure 2 the satisfaction with the two measured procedures inhibits significant dispersion. Figure 6 reveals that the actual distribution of the responses approaches the bimodal distribution. Another finding is that the responses do not tend to group in one of the categories of the scale. Indeed, the most satisfactory category is the less populated in both countries but we see that the satisfaction with the procedure is far from uniform.

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

If the majority of the responses in Figure 6 were clustered in the categories of 'satisfied' or 'very satisfied' we could say that the procedure is rather certain in terms of its positive outcomes. In the alternative scenario of negative scoring one could conclude that the users would have a high degree of certainty that the procedure is of low quality. Beliefs that a process for solving a need for justice will yield low satisfaction inevitable will turn into subjective barrier to justice. In a

hypotheses when the expected procedural or outcome satisfaction is unknown or lies in a wide interval, the user will have to accept higher risk if she decides to follow a path to justice. This risk will be less of a barrier to justice as compared with the case when there is a certain expectation about poor quality or unsatisfactory outcome. Nevertheless, this uncertainty will be hindering certain proportion of people who need a path to justice to solve their problem.

The hypothesized link between satisfaction with the quality of the procedure and quality of the outcome and actual behavior relies on the assumption that knowledge on paths to justice is dispersed in the society. When non-repetitive players have to decide whether to use the external norms and interventions, decisions are based on certain information. This information is not only based in primary experiences but also comes from secondary sources. Those who retain a professional adviser will be able to make an informed decision based on the received advice. Others will rely on their social network or media sources for direct or indirect information sources. Our assumption is that the experiences captured in Figure 6 and Figure 2 reach the public domain and people rely on them when making decisions. Depending on the problem the diffused social knowledge will reflect the objective truth at different levels of precision.

CONCLUSION

This paper reports on the challenges related to the measurement of the costs and quality of paths to justice, building on the experiences in the project 'Measuring Access to Justice: The Hague Model of Access to Justice.' Since the introduction of the project by Barendrecht, Mulder et al.,³⁸ progress has been made on various theoretical and methodological issues. The framework has been tested on samples of people who follow numerous paths to justice in different jurisdictions. Many issues still need to be resolved and many elements of the emerging measurement methodology have to be refined and improved. Particularly, the measuring instrument needs to be exposed to more different contexts. Empirical testing of the instrument for more paths to justice for more legal problems will further calibrate and improve it.

³⁸ Barendrecht et al., 'How to Measure the Price and Quality of Access to Justice?'