

**JUSTICE AND THE POOR.  
FORMAL vs. INFORMAL DISPUTE RESOLUTION  
MECHANISMS: A GOVERNANCE-BASED APPROACH**

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*by*

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**I • INTRODUCTION: THE MAIN ISSUE**

Democracy functions as a system with formal and informal institutional interrelated mechanisms serving the purpose of translating social preferences into public policies. Enhancing the effectiveness of society's dispute resolution mechanisms is also a way to address social preferences through public policies within the judicial domain.<sup>1</sup> Therefore, it is necessary to ensure that the institutions responsible for the interpretation and application of laws are able to attract those parties who can't find any other way to redress their grievances and solve their conflicts.<sup>2</sup>

In order to avoid cultural, socio-economic, geographic, and political barriers to access the court system, the judiciary must adopt the most effective substantive

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<sup>1</sup> See Buscaglia, Edgardo (1996), "Introduction to Law and Economics of Development," *Law and Economics of Development*, New Jersey: JAI Press

<sup>2</sup> *Id.* at 56

and procedural mechanisms capable of reducing the transaction costs faced by those seeking to resolve their conflicts. If barriers to the judicial system affect the socially-marginalized and poorest segments of the population, expectations of social and political conflict are more common, social interaction is more difficult, and disputes consume additional resources.<sup>3</sup>

The factors affecting the demand and supply for dispute resolution need to be considered when analyzing the efficiency/effectiveness in its provision. For those who demand dispute resolution mechanisms, three factors may be considered as relevant: (i) the ex-ante guidance effect, (ii) the objective determination of the disputants interests, and (iii) the reinforcement of the assigned rights and obligations. Factor 1 represents a public good while factors 2 and 3 can be considered as nonpublic (i.e. private dispute resolution can provide these services)

“Top-down” approaches to law making may cause social rejection of the formal legal system among marginalized segments of the populations in developing countries who perceive themselves as “divorced” from the formal framework of public institutions.<sup>4</sup> This “divorce” reflects a gap between the “law in the books” and the “law-in-action”<sup>5</sup> This divorce between formal and informal

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<sup>3</sup> Norms are here understood as coordinating mechanisms for social interaction. Refer to Buscaglia, Edgardo (1996), "Introduction to Law and Economics of Development," *Law and Economics of Development*, New Jersey: JAI Press, pp. 24-29; and to Cooter, Robert (1996) "The Theory of Market Modernization of Law", *International Review of Law and Economics*, Vol. 16, No 2, pp. 141-172.

<sup>4</sup> The “Law and Development” movement is ascribed to Seidman (1978), Galanter (1974), and Trubek (1972). These authors generally sponsored a comprehensive and centralized legislative reform covering the modernization of the public and private dimensions of the law through international transplants from “best practice” legal systems. Also Refer to K. Pistor's latest work.

<sup>5</sup> See Buscaglia, Edgardo (1996), "Introduction to Law and Economics of Development," *Law and Economics of Development*, New Jersey: JAI Press, pp. 24-29

rules is usually rooted in the lack of formal system's benefits (i) (ii) and (iii) as stated above.

As a result, large segments of the population who lack the information or the means to surmount the significant substantive and procedural barriers seek informal mechanisms to redress their grievances. Informal institutions do provide an escape valve for certain types of conflicts. Yet many other types of disputes involving, for example, fundamental rights and the public interest remain unresolved. This state of affairs damages the legitimacy of the state, hampers economic interaction, and negatively affects the poorest segments of the population.<sup>6</sup>

This background paper addresses these concerns by using case study analysis to identify the links between access to justice and poverty, and by then identifying those governance-related factors blocking the access to justice to the poorest segments of the population.<sup>7</sup> We assess the nature of these links through the study of three cases that describes and analyzes the patterns of demand for formal and informal mechanisms to resolve disputes by samples of the rural population in Colombia's Andean Region—where 70 percent of the nation's population lives. Two rural areas within the Department of Boyaca have been selected for this study: Pauna and San Pablo de Borbur. We must note that these two municipal jurisdictions have been experiencing relatively low levels of violence and guerrilla activity compared to the rest of the Andean Region. These two regions will be compared to a third Colombian rural area (Socha) where

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<sup>6</sup> See Buscaglia, Edgardo (1996), "Introduction to Law and Economics of Development," *Law and Economics of Development*, New Jersey: JAI Press, pp. 24-29

<sup>7</sup> This background paper is part of a larger study covering similar links in the rural and urban regions of Argentina, Chile, Colombia, and Ecuador.

neither formal nor informal effective mechanisms to resolve disputes are currently functional.

After a descriptive section on the patterns of access to justice, this paper will later focus on two main analytical aspects:

- (i) The economic impact of dispute resolution mechanisms on the average rural family's economic net worth. This section has strong implications addressing the links between dispute resolution mechanisms and poverty levels; and
- (ii) the governance-related roots of the problems affecting formal *vis a vis* informal dispute resolution mechanisms.

## **II- THE RELATIVE ECONOMIC IMPACT OF FORMAL vs. INFORMAL DISPUTE RESOLUTION ON LITIGANTS NETWORK**

Most judicial systems found in Latin America and Europe were designed during the 19th century within the general framework of the Napoleonic model of centralized parliamentarist law-making. A top-down and centralized approach to law making was then transplanted to most Latin American countries, including Colombia, and has survived until this day. This “top-down” institutional legal framework has shown scarce capacity to translate the law in the books into “law in action” for dispute resolution purposes.<sup>8</sup> In this context, excessive procedural formalisms and administrative complexities block the filing and resolution of relatively simple cases, such as land title disputes or alimony cases brought by the

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<sup>8</sup> Refer to Buscaglia, Edgardo et al (2000), *Law and Economic in Developing Countries*. Stanford University Press; Buscaglia Edgardo, Robert Cooter, and William Ratliff (1996) *Law and Economics of Development*, New Jersey: JAI Press-Elsevier Science.

socially weakest segments of the population.<sup>9</sup> This failure of the public judicial system to satisfy the public's demand for court services is clearly documented in Buscaglia, Dakolias, and Ratliff (1995).<sup>10</sup>

The belief that the judicial sector within the Latin American region is ill prepared to foster private sector development within a market economic system has been documented in several studies. The most basic elements that constitute an effective judicial system are missing. These elements include: (a) predictable judicial discretion applied to rulings; (b) access to the courts by the population in general regardless of their income level; (c) reasonable times to disposition; and (d) adequate remedies.<sup>11</sup> Increasing time delay, backlogs, and uncertainty associated with expected court outcomes have hampered the access to justice and diminished the quality of justice throughout most of the Latin American region.<sup>12</sup> Colombia is no exception to this pernicious pattern of court-related services<sup>13</sup>

The links between access to justice and poverty have been scarcely explored. Authors such as Spain (1994) and Houseman (1993) describe how the poorest segments of society are at a significant institutional disadvantage in terms of their

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<sup>9</sup> See Buscaglia, Edgardo (1997), "Introduction to Law and Economics of Development," *Law and Economics of Development*, New Jersey: JAI Press, pp. 13-18;

<sup>10</sup> Buscaglia, Edgardo, Maria Dakolias, and William Ratliff (1995), "Judicial Reform in Latin America: A Framework for National Development", *Essays in Public Policy*, Stanford, California: Stanford University Press

<sup>11</sup> Buscaglia, Edgardo, Ratliff, William, and Dakolias, Maria (1995), "Judicial Reform in Latin America: A Framework for National Development", *Essays in Public Policy*, Stanford, California: Stanford University Press

<sup>12</sup> Corp[oracion Excelencia en la Justicia (1999), *Reforma Judicial en America Latina: Una Tarea Inconclusa. Bogota: CEJ (abril)*

<sup>13</sup> *Id* at 178-189

access to justice.<sup>14</sup> This background paper, that is part of a much larger five-country study, follows this line of inquiry and introduces a methodology with the capacity to determine the nature of the links between access to justice and poverty by sampling the poorest segments of Colombia's rural population. This same methodology can be applied to urban or rural areas within other countries. The rural population of Colombia accounts for 76.5 percent of those living under the poverty level.<sup>15</sup> Government statistics show that 67 percent of the land devoted to productive purposes in the Andean rural region, where 71 percent of Colombians reside, has a size equal to 5 hectares or less. Note also that 68 percent of those working this small 5 hectare-plots are considered "poor" or "extremely poor" by government official statistics.<sup>16</sup> Yet, one finds that this rural segment accounts for just 1.6 percent of the total demand to resolve civil disputes through formal court services nationwide.<sup>17</sup> One also finds that 44 percent of these civil disputes correspond to land title-related issues and 35 percent correspond to family-related cases. Clearly, there's a pattern of demand for court services that can be investigated further.

In order to conduct our investigation, a recent survey of 4,500 rural households was conducted within three municipal jurisdictions (Pauna, San Pablo de Borbur,

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<sup>14</sup> Refer to Spain, Larry (1994), "Alternative Dispute Resolution for the Poor: Is It an Alternative?" *North Dakota Law Review* Vol. 70, No 269; and Houseman, Alan W. (1993), "ADR, Justice, and the Poor" *National Institute for Dispute Resolution (NIDR)*, Summer-Fall, pp.56-78.

<sup>15</sup> Departamento Administrativo Nacional de Estadística (DANE), 1991. *Una Tipología de los Municipios Colombianos según Estructuras y Grados de Desarrollo*

<sup>16</sup> Departamento Nacional de Estadísticas (DANE), 2000. Censo de Población con Ajustes a Junio de 2000. Santa Fe de Bogotá, Colombia

<sup>17</sup> Consejo Superior de la Judicatura (2000), Atlas Judicial de Colombia. pp. 23-34

and Socha) in the Department of Boyaca.<sup>18</sup> Each of these jurisdictions is very similar in every socio-economic respect (income levels, patterns of trade and economic activity, age-distribution, gender composition, etc). Moreover, the level of organized violence (kidnappings, assassinations, and drug trafficking) show similar patterns and is clearly below the national average for Colombia.<sup>19</sup>

The survey focuses on the poorest segments of the rural population attached to imperfectly titled land that is used for productive purposes.<sup>20</sup> The paper later compares the poorest households' net worth (i.e. households within the bottom 20 percent of the regional socioeconomic range) **before and after** their access to formal and informal conflict resolution mechanisms in cases dealing with land title-survey-related disputes and alimony payments. As mentioned above, these are the most common case types affecting the poorest segments of society in the region covered by our sample. We then seek precise indications of how and why dispute resolution mechanisms affect the average household's net worth as one of the possible determinants of poverty conditions.<sup>21</sup>

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<sup>18</sup> This survey was conducted by local staff through a joint effort of the International Law and Economic Development Center during the period August 2000-January 2001.

<sup>19</sup> Camilo Echandia Castilla (2000) *El Conflicto Armado y las Manifestaciones de Violencia en las Regiones de Colombia*. Biblioteca para La Paz Tomo I. Presidencia de la Republica. Oficina del Alto Comisionado para La Paz.

<sup>20</sup> A recent study shows that 79.4 percent of the small plots suffer from some kind of title-related survey defect. Refer to Instituto Geografico Agustin Codazzi – (.G.A.C.) 2000 –Subdireccion de Geografia, Division de Estudios Geograficos Basicos.

<sup>21</sup> The problem of measuring poverty is extremely complex due to a series of factors, among them, the difficulty in identifying its triggering factors, specially those outside the socio-economic range. Moreover, poverty is not a homogeneous concept and the social groups' vulnerability factor has to be assessed.

In each household, the survey focuses on the female and male members separately, making the size of the sample equal to 7,956 individuals. This represents between 3 and 5 percent of each jurisdiction's total population randomly selected and stratified by education, gender, level of income, and age.<sup>22</sup> All of the 4,500 rural households are attached to formal tenures of small plots of land of 5 hectares or less devoted to agricultural purposes.

Within our total sample, 3.7 percent of those interviewed showed proof that they have attempted to access formal court-provided civil dispute resolution mechanisms, (compared to 4.9 percent of the same poorest segment of the population in urban areas nationwide) while just 0.2 percent of the sampled households (i.e. 9 out of 4,500 households) responded that they were able to obtain some type of final resolution to their land or family disputes (involving mainly title-survey defects and alimony cases) through the court system. We also found that 91 percent of those demanding court services during the period 1998-99 were within the upper ranges of net worth, while just 9 percent of those court users were in the lowest 10 percent range of measurable net worth within the region.<sup>23</sup>

In contrast to the low demand for court services, 8 percent of those interviewed in 1999 and 7.5 percent of those interviewed in 2000 gave specific detailed instances of using community-based mechanisms (mostly neighborhood councils and complaint panels) and of reaching final resolutions of land-title and/or family civil disputes. This indicates a gap between formal and informal institutional usage through community-based conciliation and neighborhood complaint boards that

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<sup>22</sup> The samples were designed to allow for a 1.5 percent margin of error and estimates within a 95 percent confidence level>

<sup>23</sup> Networth is measured here in the most objective manner by calculating, as part of the survey, the approximate value of family assets net of sliabilities.

needs to be addressed.. In this context, complaint panels can be considered social control mechanisms needed to stabilize the allocation of property rights.<sup>24</sup> The Complaint Panel or Board is composed of three “prominent local residents” selected by Neighborhood Councils (“Parroquias Vecinales”) and as such, they do enjoy a high level of popular-based legitimacy. Although the Boards’ decisions are not legally binding, their decisions do receive tacit approval by municipal authorities. In fact, Survey Bureaus within the municipal government in these three jurisdictions formally refer to the Boards’ findings in order to substantiate their own rulings. This clearly indicates the local governments’ recognition of the Boards’ rulings. Decisions are not appealed and social control mechanisms usually prevail in the enforcement of the Boards’ decisions.

Based on the survey explained above, a large number of social indicators measuring access to public institutions was generated. Chart 1 below measures the proportion of the rural population within the three departments that attest to having no access to the most basic provision of public health, education, and justice (i.e. social basic services).<sup>25</sup> We can also observe that, in these three regions, high degrees of public dissatisfaction are well above the national average.

## CHART 1

### PERCENTAGE OF THE HOUSEHOLDS LACKING ACCESS TO PUBLIC INSTITUTIONS

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<sup>24</sup> Cartas # 1, 2, y 3” in “*Paz Publica: Programa de Estudios sobre Seguridad, Justicia, y Violencia.*” Bogota, Universidad de los Andes 1997-99

<sup>25</sup> The access to basic social services in Colombia is considered in Cartas # 1, 2, y 3” in “*Paz Publica: Programa de Estudios sobre Seguridad, Justicia, y Violencia.*” Bogota, Universidad de los Andes 1997-99

	<b>Social Basic Services</b>	<b>Justice Sector</b>
Pauna	77	88
San Pablo de Borbur	69	71
Socha	81	92
Regions' Average	82	83
National Average	53	62

If now one focuses on those access to justice indicators shown in Chart 1, we see that between 88 and 71 percent of the sample in these three jurisdictions consider that they lack access to formal systems of justice (including here the police, the prosecutor, and the courts). The most important obstacles to court access can be seen in the following Chart 2.

## CHART 2

### THE MOST IMPORTANT OBSTACLES TO ACCESS THE COURTS

	<b>% Who Consider It a Serious Obstacle</b>	<b>% Who Consider It the Main Obstacle</b>
<b>Information on Rights and Obligations</b>	<b>66%</b>	<b>24%</b>
<b>Basic Information on Initial Proceedings</b>	<b>44%</b>	<b>22%</b>
<b>Direct Costs (lawyers court fees)</b>	<b>42%</b>	<b>21%</b>
<b>Delays</b>	<b>39%</b>	<b>15%</b>
<b>Corrupt Practices</b>	<b>31%</b>	<b>11%</b>
<b>Fear of Abuse of Authority</b>	<b>19%</b>	<b>5%</b>
<b>Distance: Geographical Access</b>	<b>9%</b>	<b>2%</b>

The results from Chart 2 show a clear pattern of uncertainty among those households classified as court users in part due to the lack of legal information (66 percent of them perceive an obstacle rooted in the lack of legal information). The traditional economic factors involved in the access to justice seem to also be present in our three case studies; 42% of the court users consider that the costs of representation impede their access to courts while 21 percent of the sampled households consider it the most important obstacle. Moreover, the fear of abuse of authority by the most unprotected segments of the population is still present; 19 percent of the households consider this factor to be an obstacle, though only 5 percent of them see it as the most important obstacle. Finally, corrupt practices are an obstacle in the minds of 31 percent of the court users, though only 11 percent consider corruption the most important obstacle to access civil courts.

If one stratifies these numbers even further, it is also possible to find a clear gender gap among those households within the lowest 20 percent of regional net worth as shown in Chart 3 below:

**CHART 3****PERCENTAGE OF SAMPLE LACKING ACCESS TO FORMAL STATE-  
PROVIDED CONFLICT RESOLUTION MECHANISMS**

	<b>WOMEN</b>	<b>MEN</b>
Pauna	96	65
San Pablo de Borbur	82	61
Socha	99	85
Regions' Average	90	76
National Average	72	52

The interesting aspect of these observations is that the types of reasons given for the lack of access (i.e. lack of information on initial procedures, high costs, delays, fear of authority, and long distance to the court of jurisdiction) show no significant difference when comparing male and female interviewees. Yet, as we can also see from Chart 3, the gender gap in access to justice shows worrisome characteristics.

### III • INFORMAL VS. FORMAL DISPUTE RESOLUTION MECHANISMS: THEIR IMPACT ON HOUSEHOLDS' NETWORTH

As seen above, the judicial systems have lagged behind in the process of providing court services to a population that is solving their conflicts through informal mechanisms. This gradual decline in the public formal-adjudicative system capacity to handle disputes may also be accompanied by negative impacts of court services on poor households' net worth. This survey therefore focuses on providing a comparison of the "before and the after" net worth of those households that have demanded conflict resolution mechanisms either through formal or informal channels. We concentrate now on those 526 households in order to determine the approximate change in their net worth as a result of either determining alimony payments or of clarifying title to their plots of land.

We take the original sample composed of the lowest 20 percent of net worth within the regional population of Pauna and San Pablo Borbur. Our measure of net worth requires the survey-based determination of all sources of income, value of all types of fixed and movable property net of all household liabilities. We divide our sample into four subgroups from the largest to the lowest levels of net worth. We then assess the impact of land disputes on the value of land and household income. We also assess the impact of alimony payments on the households' annual income.<sup>26</sup> We then compare the *annual percentage changes in net worth* as a result of receiving clear title to land or alimony payments through either the formal or the informal systems.

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<sup>26</sup> The survey techniques used to capture asset value and income levels are similar to the methodological standards applied by the US Census Bureau. Refer to <http://www.census.gov/www/statistics.html#online>

## CHART 4

### EFFECTS OF FORMAL vs. INFORMAL MECHANISMS ON PERCENTAGE CHANGES IN NETWORTH

	CIVIL COURTS	COMPLAINT BOARD	SOCHA
Lowest 15-20 percent	3.4	5.2	0.2
Lowest 10-15 percent	1.2	4.1	1.2
Lowest 5-10 percent	-2.9	9.1	-0.3
Lowest 1-5 percent	-7.8	10.7	0.1

From Chart 4 above, it is then possible to assess the impact of land dispute resolution and alimony payments on a household's property value and income flows respectively. As a result one can compare the "before and the after" the dispute resolution and, therefore, calculate the percentage change in net worth.

At a first glance one can observe that within the sample taken here, the **effects of formal civil court proceedings on households' net worth** is sometimes negative and always below the levels of positive impact that households enjoy from the use of informal mechanisms. As we can see, the bottom net worth segment of the households' sample (i.e. the poorest households within the bottom 5 percent of the net worth range) is the one that benefits the most under the informal dispute resolution system (an average 10.7 percent increase in their net worth) as compared to a -7.8 percent decrease in net worth by following formal civil court proceedings. **As a result, one can conclude from our sample that court**

**proceedings represent a regressive tax on those households within the bottom net worth range.** These poorest households are the least able to bear the delays of the formal system and some are forced to sell disputed portions of land at discounted prices. In addition, the poorest households are the least likely to have access to any meaningful legal assistance. As we've seen above, the Socha rural region, on the other hand, lacks proper (functional) formal or informal mechanisms for its citizens to resolve these types of civil disputes. In this kind of institutional environment, the sample of households from Socha do not experience any significant change in real net worth during the same two year period.

#### **IV- GOVERNANCE RELATED FACTORS AFFECTING FORMAL AND INFORMAL SYSTEMS**

Previous studies have shown that complaint boards represent a socially accepted and widely demanded mechanism within institutionally isolated regions where the state has little or no presence.<sup>27</sup> As stated above, the typical “complaint panels or boards” is composed of three “prominent local residents” selected by Neighborhood Councils (“Parroquias Vecinales”) and as such, they do enjoy a high level of popular-based legitimacy.

Within the area of conflict resolution, civil courts must then incorporate some of the comparative advantages of the informal mechanisms in order to improve its own social impact on households' well being. These informal mechanisms have already shown the potential to expand the market place of resolution options and allow disputing parties to seek their own solutions that

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<sup>27</sup> *Id* at 61

better reflect regional social norms and practices. For example, the Boards provide a flexible process of negotiation between the parties in dispute. This is the first step taken by the parties in conflict. The parties start listening to each other's viewpoints and identify common interests at stake while a Board member usually proposes a range of possible solutions to their conflict.

If in between 4 to 10 days the parties do not reach an agreement, then the parties can select a third party to determine the facts of the case and reach a final decision. The decision can be binding or nonbinding depending on the parties' agreement made prior to the final decision. A binding decision avoids further proceedings and reduces conflict-related costs, and a nonbinding decision has the advantage of providing a guide for the parties in order to bring them closer to agreement. One could then call this process a "Mediation-Arbitration Combo" where a panel composed of prestigious volunteers selected from neighborhood councils (*parroquias vecinales*) provide informal conflict resolution services to members of the community. In many cases, these informal mechanisms serve as supplements to the formal systems of justice.

Indeed, these type of mechanisms have become increasingly popular in Colombia's rural areas and there are accounts of how the FARC guerrillas have adopted them in order to gain legitimacy among the population.<sup>28</sup> The survey shows that 61 percent of our sampled households perceive that informal systems offer ways to sidestep the delays and uncertainty associated with the formal judicial system. In some cases, the disadvantages of litigation may provide the most important reason in deciding whether or not to use informal mechanisms.

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<sup>28</sup> Refer to *La Semana*, "Narcotráfico y Guerrillas: La Prueba Reina" pp. 26-30, April 2-9, 2001

A review of our survey results confirms the results found in the literature dealing with the use of informal dispute resolution mechanisms.<sup>29</sup> These results point to seven major potential comparative advantages of informal alternative dispute mechanisms in rural areas *vis a vis* the formal public court system.

In short, our survey results show that the main comparative advantages of the informal “complaint board-panel” system consist in::

- (i) reducing the outcome-related uncertainty faced by the poorest segments of the rural population in the three sampled regions (57 percent of our sample of households consider it an advantage);
- (ii) increasing the access of marginalized groups to a framework within which solutions to their conflicts emerge as a result of a participatory consensual approach that includes the parties and the complaint board as a “facilitator” (81 percent of our sample of households consider it an advantage);
- (iii) less abuse of discretion due to the more predictable application of rules to resolve a conflict (46 percent of our sample of households consider it an advantage);<sup>30</sup>
- (iv) lowering the users’ direct costs of solving disputes (56 percent of our sample of households consider it an advantage);

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<sup>29</sup> Edwards, Harry (1986), "Commentary: Alternative Dispute Resolution: Panacea or Anathema?" *Harvard Law Review*, Vol. 99, No 668

<sup>30</sup> Refer to Buscaglia Edgardo, Robert Cooter, and William Ratliff (1996) *Law and Economics of Development*, New Jersey: JAI Press-Elsevier Science.

- (v) providing more transparent procedures and management of the disputes than the courts do (51 percent of our sample of households consider it an advantage);
- (vi) providing enhanced options available to the public to resolve disputes, away from the undue influence exercised by the “powerful” on judges’ final rulings (14 percent of our sample of households consider it an advantage); and
- (vii) providing better practices and better mechanisms oriented to serve the interests of citizens through a “fairer resolution of the case” than civil courts do (79 percent of our sample of households consider it an advantage)

Studies show that populations around the world have always sought to solve their disputes privately within communities and informal groups.<sup>31</sup> The need to introduce generally accepted private mechanisms to solve disputes within socially marginalized communities becomes a particularly urgent matter whenever the formal court system collapses. It is observed that in Socha, the number of cases (per 1000 in population) where communities take matters into their own hands through vigilantism, "mob justice," and lynching is five and a half times greater than in San Pablo de Borbur or in Pauna where, as shown above, socioeconomic conditions are similar. This confirms the general finding that where formal and

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<sup>31</sup> Refer to Spain (1994) *Ibid*

informal mechanisms are not functional, human rights violations are increasingly present.<sup>32</sup>

One should also recognize the limitations in the range of case types that can be resolved through informal mechanisms. Historically, courts in Colombia and elsewhere in Latin America have used conciliation techniques for family cases, especially alimony and divorce cases, and in labor disputes.<sup>33</sup> But when the substance of a conflict involves case types where the public interest may be at stake (e.g. civil and political liberties), then informal mechanisms will not supply the “public good” involved in generating jurisprudence or doctrines within legally binding decisions.<sup>34</sup>

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<sup>32</sup> Buscaglia, Edgardo (1996), "Justice and the Strengthening of Democracy", Paper Presented before the USAID sponsored Conference on Justice and Democracy. Quito, Ecuador, August 7-9, 1996

<sup>33</sup> Spain (1994) and Houseman (1993), *Ibid*

<sup>34</sup> Jurisprudence or legal doctrines can be considered “public goods” which exhibit the traditional consumption indivisibilities and no excludability properties. Refer to Refer to Buscaglia Edgardo, Robert Cooter, and William Ratliff (1996) *Law and Economics of Development*, New Jersey: JAI Press-Elsevier Science.

## VI • CONCLUSION

This study has introduced a methodology where the links between access to justice, governance-related factors, and the impact on the poor can be identified and assessed. This same methodology can be applied in any other context or country through the use of objective and perceptual survey indicators.

In the scenario provided by this paper, Colombia's imperfect democracy needs to find innovative ways for individuals to redress their grievances whenever their rights are infringed. This paper has identified the main governance-related advantages of the informal dispute resolution mechanisms used by the poorest segments of society within three rural jurisdictions in Colombia's Andean Region. As shown above, the advantages of the informal system include (i) the reduction in the outcome-related uncertainty faced by the poorest segments of the rural population in the three sampled regions; (ii) the increase in the access of marginalized groups to a framework within which solutions to their conflicts emerge as a result of a participatory consensual approach that includes the parties and the complaint board as a "facilitator"; (iii) less abuse of discretion due to the more predictable application of rules to resolve a conflict; (iv) lower users' direct cost of solving disputes; (v) the provision of more transparent procedures and management of disputes than offered by the courts; (vi) the provision of enhanced options available to the public and businesses to resolve disputes away from the undue influence exercised by the "powerful" on judges' final rulings; and finally (vii) the provision of better practices and mechanisms oriented to serve the interests of citizens through a "fairer resolution of the case" than offered by civil courts. The civil courts' seven relative governance failures identified here can now be addressed in future judicial policies.

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