

Rule of Law Solutions: Access to Civil Justice in the Sahel

Literature Review

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Introduction

In development policy, the past four decades have witnessed substantial investments in access to justice and the rule of law: efforts to strengthen judicial capacity, reform policing, and foster open government now feature prominently in the portfolios of major aid agencies such as the United States Agency for International Development (USAID), the United Kingdom's Department for International Development (DFID), and the United Nations Development Programme (UNDP). These efforts reflect a growing consensus that the rule of law can be defined, measured, and linked to stable economic growth and improved human security.¹ Such programs reflect a gradual evolution in development policy away from major infrastructure projects that may exacerbate corruption, securitized approaches to fragility that can fuel extremism, and top-down efforts to conjure growth by applying "first principles" derived from microeconomic theory; toward empirically responsive programs that aim to improve governance, increase transparency, and include marginalized groups in the political and economic life of developing nations.² Yet what effect might greater access to justice have upon the drivers of conflict? Could greater access to justice promote resilience in one of the world's most fragile regions, the West African Sahel?

This essay offers a preliminary review of the relevant academic literature. With an eye toward practical solutions for the region's worsening security and humanitarian crises, it aims to inform the ongoing policy conversation about how to improve governance, reduce violence, and strengthen rule of law in the Sahel. Drawing upon data-driven insights about legal needs and satisfaction, it considers the role access to justice can play in fostering peace and resilience in seven West African countries that either intersect or border the Sahel: Burkina Faso, Cameroon, Mali, Mauritania, Niger, Nigeria, and Senegal. To that end, it provides a working definition of access to justice which is grounded in a comprehensive

¹ Andersen and Piccone (2019); *see also* Davis (2017) on the importance of governance for economic development in Africa; Kaufmann, Kraay, and Mastruzzi (2010) for a discussion of how the rule of law correlates with other governance indicators; Han, Khan, and Huang (2014) for the predictive importance of the rule of law economic growth; and Salawu et al (2018) for a regression analysis of how poor rule of law has specifically weakened economic growth in Nigeria.

² Piron (2006); *see also* Bannerjee and Duflo (2011) on the evolving consensus in development theory; Acemoglu and Robinson (2012) on the link between extractive political institutions and economic paralysis; and Brautigam (2009) on the fraught relationship between international development aid and the rule of law in Africa.

measure for the rule of law. It then sketches a general theory of change, considering how greater access to justice might complement four dominant policy frameworks for addressing violence and fragility in general: peacebuilding, legal empowerment, counterterrorism (CT), and preventing/countering violent extremism (P/CVE). Third, it analyzes legal needs and satisfaction data from the access to justice module of the WJP General Population Poll (GPP), a household survey conducted across 101 countries in 2018-2019. Drawing upon these findings, as well as qualitative information gathered for the production of WJP's 2019 *Rule of Law Index*, it offers general recommendations for policymakers and program implementers working in the Sahel; and it discusses specific cases where justice reformers are targeting the most prevalent legal needs in their community, improving civic education and legal information, investing in collaboration with non-legal service providers, or developing the capacity of non-lawyer representatives to deliver justice for all.

I. What is Access to Justice?

Access to justice comprises the ability of people to resolve justice problems in a manner that is timely, affordable, and fair. In contrast with negative principles like absence of corruption or constraint on government powers, this idea emphasizes the rule of law in its positive aspect, meaning it captures the reality that individual human flourishing requires functioning institutions and justice systems, as well as equal access to opportunities the law provides.³ These worthy goals reflect the foundational principle that the rule of law includes “accessible and impartial dispute resolution,” an ideal requiring “competent, ethical, and independent representatives and neutrals who are accessible, have adequate resources, and reflect the makeup of the communities they serve.”⁴ Access to justice is rooted in a longstanding tradition, now enshrined as the entitlement to counsel, of providing legal help to the poor.⁵ Though operational

³ World Justice Project (2019b)

⁴ *supra.*, Andersen and Piccone (2019), 105

⁵ In the United Kingdom, the Rushcliffe Committee Report led to the establishment of a Legal Aid Board in 1946. In the United States, Lyndon Johnson's “War on Poverty” led to the establishment of a national Office of Economic Opportunity (1964); followed by the Legal Services Corporation (1974), which continues to operate today. *See* Smith (1947) for an historical review of the Rushcliffe Committee Report.

definitions vary, access to justice entails the practical ability to settle disputes within the shadow of the law.⁶ Yet because extreme injustice can hamper the delivery of social goods, access to justice also implies preventing radically unjust conditions such as statelessness, modern day slavery, and fragility or insecurity.⁷ Access to justice therefore represents a pragmatic inflection for the rule of law, since it emphasizes the interplay between the state's capacity to empower and its responsibility to protect.⁸

The precise nature of this relationship raises complex questions of definition and measurement. How thick a concept should we measure? In other words, to what extent should access to justice reflect constraints on government power, absence of corruption, open government, fundamental rights, order and security, or regulatory enforcement? Ideally, policies that increase access to justice should incorporate a comprehensive definition for the rule of law. In reality, access to justice is a cross-cutting measure because complex and interrelated factors can determine a person's ability to attain fair resolution for justiciable problems, as can effective systems of civil, criminal, and informal justice.⁹

Practically, however, it can be easier to measure the delivery of legal services rather than the myriad factors that determine the impact of a given program or policy for rule of law. In a watershed development, the United Nations resolved to include both "rule of law" and "access to justice" among the Sustainable Development Goals, a set of targets that member states have committed to achieve by the year 2030.¹⁰ More recently, the Inter-agency and Expert Group on Sustainable Development Goal Indicators (IAEG-SDGs) tentatively agreed to adopt a specific indicator for Goal 16.3 based upon a proposal submitted by a coalition of civil society organization. If approved, this indicator would require U.N. member states to measure the "proportion of the population who have experienced a dispute in the past two years and who accessed a formal or informal dispute resolution mechanism, by type."¹¹ Compare this target with language in an earlier draft submitted by the United Nations Development Programme

⁶ OECD and World Justice Project (2019), 3-9

⁷ *supra.*, World Justice Project (2019b)

⁸ Bruegger (2016)

⁹ World Justice Project (2019c), 10-13

¹⁰ GA A/RES/70/1 (21 October 2015)

¹¹ IAEG-SDGs (2019)

(UNDP), Organisation for Economic Co-operation and Development (OECD), World Justice Project (WJP), and Open Society Justice Initiative (OSJI): their initial proposal calls for a measure of the “Proportion of those who experienced a legal problem in the last two years who could access appropriate information or expert help and were able to resolve the problem.”¹² In other words, UN SDG 16.3.3 would measure whether a given country has met the demand for legal help, but not whether expanded access had resolved a given legal problem.

How might an effective measure for access to justice help to shape government policy? A burgeoning sociology of the law has begun to answer this question by focusing on alternative forms of dispute resolution, as well as the structural factors that drive civil conflict. Essential legal services have developed alongside a growing theoretical awareness that fair redress entails more than legal aid, and the most efficient way to resolve civil conflict is to prevent them from entering the formal justice system entirely.¹³ During the 1980’s and 1990’s, a generation of supply-side reformers posed fundamental questions about how the legal industry should be organized to meet the aggregate need for essential legal services.¹⁴ In response, there has been some movement to open the courts, deregulate the legal profession, and mobilize lawyers on behalf of the poor. The British legal system, for example, was gradually reorganized in response to a 1979 report by the Benson Commission: the Courts and Legal Services Act of 1990 and the Access to Justice Act 1999 expanded access to legal aid, introduced mechanisms for alternative dispute resolution, and made incremental progress towards deregulating the legal profession. More recently, a new generation of scholarship has emphasized demand-side factors contributing to the gap between justice needs and legal services.¹⁵ There is newfound recognition that more legal aid accomplishes little when justice systems are corrupt, poorly managed, or badly organized. Cultural factors may disempower potential litigants by discouraging them from viewing their grievance as a legal problem, and the poor may be reluctant to seek redress within legal systems that are viewed as corrupt,

¹² UNDP, OECD, WJP, OSJI (2019)

¹³ Pascoe, Balmer, and Sandefur (2013); NYU Center for International Cooperation (2018)

¹⁴ Houseman and Perle (2003).

¹⁵ Albiston and Sandefur (2013)

ineffective, or rigged to serve elites.¹⁶ The poor, the disabled, and the disempowered often fail to identify justiciable problems; in the instances when they do recognize their problem as a legal issue, they may either associate the law with poor outcomes or fail to obtain appropriate legal help.¹⁷ Moreover, even the most efficient legal system cannot resolve legitimate grievances when the law has been designed to expropriate.¹⁸

Such market failures are by no means constrained to the demand for legal help; they are a common bug in programs intended to address a variety of health and development outcomes.¹⁹ Well-intentioned policies can be hampered by small design flaws, and the poor remain poor because their opportunities and incentives fail to generate wealth. In response, demand-side policies have introduced new procedures, new professions, new sources of funding, and new mechanisms for dispute resolution. Traditional legal aid societies have been supplemented by nonprofit organizations who advocate for policies benefiting the poor, in addition to providing targeted legal services and pro bono representation. An expanded research agenda would reflect this complexity in theory, and it would capture in practice the full range of policy options from mundane interventions to systemic reforms.²⁰

In a nod to this complexity, The American Bar Association (ABA) has developed a diagnostic tool for measuring a given population's access to justice. It includes six key elements for civil justice: legal frameworks, legal knowledge, advice and representation, access to a justice institution, fair procedure, and enforceable solutions.²¹ From a programming standpoint, the range of interventions is more capacious still. For example, the International Development Law Organization (one of the major

¹⁶ World Justice Project (2019a), 7

¹⁷ *ibid.*

¹⁸ Acemoglu and Robinson (2012)

¹⁹ In Burkina Faso, parents tend to concentrate their resources in the education of a single "talented" child rather than providing for all their children equitably, despite the fact that marginal returns to potential income diminish with each additional year of schooling; Akresh, Richard et al. (2010). In rural Bihar, India, the poor fail to invest in essential nutrients, even though cheap iron supplements can produce large gains in worker productivity; Banerjee, Barnhardt, and Duflo (2016). Likewise, simply expanding access to contraception has failed to lower adolescent birth-rates, in some cases, because young women were either uninformed about family planning, or they enjoyed limited reproductive autonomy; Bannerjee and Duflo (2011), 111-119.

²⁰ *supra* Albiston and Sandefur (2013), 115

²¹ ABA Rule of Law Initiative, 2012

implementers in the Sahel) reflects this expanded view in the assertion that “the rule of law operationalizes human rights through constitutional protections, institutions for effective implementation and accountability, judicial and administrative remedies, and the legal empowerment of people to access justice and claim their rights.”²² Beyond providing legal aid to the poor, IDLO’s “access to justice” agenda includes programs for legal empowerment, human rights, trafficking, indigenous peoples, children, sexual identity, and refugees and migrants.²³ Such interdisciplinary approaches extend the market analysis of legal supply and demand, pioneering systems-oriented approaches to expanding access to justice.

Legal needs scholarship has been instrumental in galvanizing support for these reforms by revealing the extent of public mistrust and misprision towards the legal system. In the United Kingdom, one influential milestone was Dame Hazel Genn’s legal needs survey of England and Wales, which pioneered the “journey” heuristic for assessing legal needs. Working from the premise that many Britons did not seek help for their “justiciable” problems, i.e. personal difficulties that might conceivably be resolved in civil court, Dame Genn traced the “justice journeys” of individuals who sought legal help, attempted to resolve their problem without help, or simply chose to leave it unresolved.²⁴ Based upon focus group discussions, she identified justiciable problems in a number of categories that do not generally qualify for legal assistance, including employment, property ownership and rental, faulty goods or services, money, personal and family relationships, parenting minor children, occupational injuries and health problems, discrimination, unfair treatment by police, immigration or nationality, and medical/dental malpractice.²⁵ Genn also observed that “problems and misfortune tend to come in clusters,” such as issues with children arising in cases of divorce, echoing a pattern seen in studies of crime victimization.²⁶ Genn’s conclusions lead to a common policy refrain: programs should target

²² IDLO, 2017

²³ IDLO, 2019

²⁴ Genn (1999)

²⁵ *idem*, 21-22

²⁶ *idem* 34

vulnerable populations, procedures should be designed to address the most common legal problems, and services should be bundled to meet a variety of interrelated needs.²⁷ At a 2019 convention in the Hague, an international quorum of justice representatives called upon UN member states to develop a people-centered and solutions-oriented approach to legal services, exhorting them to leverage new technologies and to diversify the provision of justice.²⁸ Recognizing the economic importance of self-help strategies, the declaration also emphasizes legal education, empowerment, and the elimination of structural barriers; as well as mechanisms for prevention and alternative dispute resolution.

However it is measured, goal 16.3 will be a monumental undertaking. Providing universal access to fair, timely, and affordable dispute resolution will require nothing less than a global transformation in how poor people currently experience the law. In a landmark report, WJP estimated that equal justice for all would require society to address the unmet legal needs of 5.1 billion people.²⁹ Building upon this analysis, The Pathfinders Task Force on Justice at the Center on International Cooperation (NYU-CIC) has proposed a “people-centered” roadmap for SDG 16.3, calling upon actors in government, the justice sector, civil society, the private sector, international and regional organizations, and foundations and philanthropists to do their part in closing the justice gap.³⁰ It’s a tall order, requiring a preventive approach and a whole-of-society commitment to justice. A working paper from the Overseas Development Institute (ODI) notes that donor financing for justice programs, which already lagged far behind education and health, declined sharply over the period 2014 - 2018.³¹ Moreover, justice funding for post-conflict, low-income countries tended to be concentrated in just three countries: Afghanistan, Haiti, and Liberia.³² Yet meaningful progress toward achieving goal 16.3 could substantially affect related goals for peace, health, security, poverty, and inequality. Primary research conducted by WJP has linked unmet justice needs with negative health, economic, and relationship outcomes for individuals; and a

²⁷ Open Government Partnership (2019), 39 - 40

²⁸ Task Force on Justice, 7 Feb 2019

²⁹ World Justice Project (2019b)

³⁰ Pathfinders (2019)

³¹ Manuel and Manuel (2018), 11

³² *ibid.*

review of the extant literature by members of the Task Force on Justice ties unresolved civil disputes to a range of negative social outcomes, including lost profits, interpersonal violence, criminal violence, inter-communal conflict, and human rights abuses.³³ As the following section argues, these goals are central to stabilizing fragile states in the Sahel.

II. Sources of Fragility in the Sahel: Poverty, Violence, Weak Rule of Law

In sub-Saharan Africa, where the need is greatest, programs that aim to strengthen the rule of law have had mixed results.³⁴ Justice programs are often poorly resourced compared with military and economic assistance, and there is little sign that rule of law has improved in the weakest countries.³⁵ To be sure, there is limited room for optimism: from 2018-2019, WJP observed overall improvements in Cameroon, Ethiopia, Liberia, Zimbabwe, and Botswana.³⁶ Two new countries, Mauritius and Namibia, scored higher than the global mean.³⁷ And in a year when authoritarianism increased across 58 countries, there were significant improvements in Factor 1, “Constraints on Government Powers,” in Burkina Faso, Nigeria, South Africa, Uganda, and Zimbabwe.³⁸ Yet the broader trends for sub-Saharan Africa are less encouraging. The four year average from 2015 - 2019 showed declines in Botswana, Cameroon, Cote d’Ivoire, Ethiopia, Ghana, Madagascar, Senegal, Tanzania, Uganda, and Zambia.³⁹ Burkina Faso, Nigeria, and South Africa all declined slightly after strong improvements in 2015 - 2016.⁴⁰ Only Liberia, Kenya, Malawi, Sierra Leone, and Zimbabwe have shown durable progress.⁴¹

The rule of law is particularly weak in countries bordering the Sahel. Of the seven countries included in this study, only Senegal and Burkina Faso perform near the global median score for overall

³³ World Justice Project (2019b); NYU-Center for International Cooperation (2018)

³⁴ World Justice Project (2019d), 16; Chukwumerije (2009)

³⁵ World Justice Project (2019d), 13

³⁶ *ibid.*

³⁷ *ibid.*, 16

³⁸ *ibid.*, 18-19

³⁹ *ibid.*, 14-15

⁴⁰ *ibid.*

⁴¹ *ibid.*

rule of law.⁴² Mali ranks next, at 103 out of 126 countries surveyed, followed closely by Niger and Nigeria. At 120 and 122, respectively, Cameroon and Mauritania round out the bottom of the list: only Afghanistan, Cambodia, Venezuela, and the Democratic Republic of Congo fare worse.⁴³ Given these low scores, how can access to justice contribute to security, stability, democracy, and the rule of law? Conversely, how may the quest for justice be confounded by endemic corruption, human rights abuses, and a fractured rule of law?

Across the Sahel, extremist violence has been driven by legitimate political grievances. Politically marginalized groups have reacted to historical inequities, clientelism among the elite, ethnic and religious exclusions, and disputes over natural resources.⁴⁴ State complicity with organized crime has contributed to the region's high baseline rate of violence.⁴⁵ With the exception of Senegal, all of the countries examined here have been subject to recent coups. In Burkina Faso, two senior allies of the deposed former president, Blaise Compaoré, were recently convicted for organizing an attempted coup against the transitional government.⁴⁶ In Mauritania, recurrent coups have resulted in a government dominated by military figures.⁴⁷ In 2010, food insecurity resulted in widespread riots across the region.⁴⁸ Touareg rebellions in Mali and Niger were fueled by a sense that the extraction economies, particularly uranium and petroleum industries, were not being equitably shared with local regions. In response, decentralization and incorporation of rebel leaders into the political system has helped to quell further rebellion in Niger; while in Mali, the failure to create an economic sharing agreement led to further escalation.⁴⁹

Such fragile regimes tend to respond to perceived threats with repression. In Burkina Faso, for example, 2019 saw a rapid decline in civil liberties as violence spilled over from Mali and Niger. In December, President Kaboré of Burkina Faso declared a national state of emergency, culminating a year

⁴² World Justice Project (2019c) 6-7

⁴³ *ibid.*

⁴⁴ Devermont (2019)

⁴⁵ Lacher (2012)

⁴⁶ Al Jazeera (2 Sept 2019)

⁴⁷ OECD (2014), 179

⁴⁸ *idem*

⁴⁹ *idem*, 182; Gre'goire (2013)

in which voting rights were constrained and press freedoms were sharply curtailed. Libel penalties and government pressure have created economic difficulties for local media, local activists have been sentenced to jail for posting on social media, and a new electoral code makes it difficult for the Burkinabe diaspora to vote.⁵⁰ A controversial new law imposes a “death sentence” on media outlets convicted of “demoralising armed forces.”⁵¹ In an echo of international trends, the new law criminalizes “false news” and reporting on terrorism, carrying a maximum prison sentence of 10 years and a maximum fine of 10 million CAF (\$17,331).⁵² Such harsh measures can spiral beyond control as they are greeted by popular dissatisfaction. In September, for example, Burkinabe police used tear gas to disperse thousands of protesters in Ouagadougou, sparking further calls for protest.⁵³

Environmental and economic constraints may limit the ability of Sahelian governments to deliver prosperity; however, the relationship between violence and underdevelopment is not entirely straightforward. On the one hand, a widespread perception of clientelism has fueled popular discontent and armed rebellion; on the other hand, the instigators of violence are rarely the least dispossessed, and the patterns of conflict do not cleanly align with a geographic distribution of poverty. In Mali, for instance, Touareg rebellions in the restive north have splintered the country. Yet poverty is most concentrated in the southern and central provinces of Sikasso and Mopti (80-90%), with the northeastern provinces of Kidal and Gao rivaling the capital, Bamako, for the lowest rates of poverty (<50%).⁵⁴ Rates in Timbuktu are somewhat higher (60-69%); however, only 6% of the country’s poor live in the contested states of Gao, Kidal, and Bamako.⁵⁵ It is therefore more accurate to conclude that religious conflicts overlap with and exploit structural tensions in these fragile states.

Political solutions are important, therefore, but unpredictable. Non-state violence has a long history in the Sahelian region, having gradually displaced territorial disputes as the dominant form of

⁵⁰ Freedom House (2019)

⁵¹ Maclean and Zombre (2019)

⁵² Committee to Protect Journalists (2019)

⁵³ GardaWorld (2019)

⁵⁴ OECD (2014) 190

⁵⁵ *idem*

violence in the region. According to the OECD, “at least 31 non-state groups entered into conflicts with Sahara Sahelian states” during the four decades from 1974 - 2013.⁵⁶ Senegal witnessed pro-democracy demonstrations in 2011 despite leading the region in rule of law.⁵⁷ In Nigeria, the attempt to mollify northern separatists fueled a movement towards Sharia law, which ultimately led to the emergence of Boko Haram and the consolidation of a regional jihadist movement.⁵⁸

III. Prevailing Policy Frameworks

The international community has responded to the Sahel crisis with increased military cooperation and, more recently, a strategic plan to boost development spending. In 2012, the UNSC authorized the African-led International Support Mission to Mali (AFISMA); in addition, UN resolution 2056 addressed security, governance, and resilience, calling upon the EU, World Bank, and IMF to create an Action Fund for the Sahel Region, administered by the African Development Bank.⁵⁹ In 2014, AFISMA expands into an international stabilization effort, renamed MINUSMA; Mauritania and Mali signed a cooperation agreement to combat armed terrorist groups; ECOWAS developed a strategy that includes watershed agencies and transnational structures specializing in pastoralism, irrigation, youth, gender, peace education, and democracy; the G-5 Sahel cemented a partnership between Burkina Faso, Chad, Mali, Mauritania, and Niger; and the African Union Mission for Mali and the Sahel (MISAHEL) brought together Algeria, Burkina, Chad, Libya, Mali, Mauritania, Niger and Sudan.⁶⁰ In 2019, a coalition of high-level donor agencies formed the Sahel Alliance, announcing €11 billion in funding for 730 projects by 2022. These funds plan to support the G5 countries in six “priority zones,” including education and youth employment, agriculture, rural development, food security, energy and climate, governance, decentralization and basic services, and internal security.⁶¹

⁵⁶ *idem*, 175

⁵⁷ Nossiter (2011); *supra* World Justice Project (2019c)

⁵⁸ *supra*, OECD (2014), 184

⁵⁹ OECD (2014), 215

⁶⁰ AU Peace and Security Council (2014)

⁶¹ Sahel Alliance (2019)

On the domestic front, there has been some legislative reform in an effort to improve stability. In Mali, these include the Emergency Programme to Reduce Insecurity in Northern Mali (PURIN) 2010-2012; the Plan for the Sustainable Recovery of Mali (2013-14); The Special Programme for Peace, Security and Development in Northern Mali (PSPDN); and a bill “re-establishing a state security and administrative presence in eleven strategic sites” known as secure development and governance centres (PSDG).⁶² As noted above, Nigeria has passed legislation aimed at expanding legal aid and reforming criminal procedure, though implementation has been uneven.

a. Counterterrorism (CT)

From 2001 to the present, Counterterrorism has increasingly become the dominant paradigm for confronting violence by non-state actors.⁶³ U.S. involvement in West Africa intensified following increased engagements in Yemen, Somalia, and Libya. The degree of American involvement in the region caused a firestorm when, in October 2017, four U.S. servicemen and five of their Nigerien trainees were killed in an ambush after pursuing a terror suspect near the Malian border. Prior to this incident, few Americans had been aware that U.S. troops were actively engaged in combat in Africa, as their stated mission was to “train, advise and assist” local counter-terrorism operations.⁶⁴

Unfortunately, there is scant evidence that such strategies have worked to stanch violent conflict. In a systematic review of the academic literature in 2006, The Campbell Collaborative found just seven “moderately rigorous” program evaluations out of 20,000 published studies on counter-terrorism.⁶⁵ For more current data, the National Consortium for the Study of Terrorism and Responses to Terrorism (START) at the University of Maryland maintains a database of academic literature, the Influencing Violent Extremist Organizations Knowledge Matrix (I-VEO), which assigns an “empirical support” score

⁶² OECD (2014), 76

⁶³ Karlsrud, 2019

⁶⁴ Callamachi et al, 2018

⁶⁵ Lum et al, 2006

to common hypotheses in the CT and P/CVE research space.⁶⁶ At present, 32 of the 118 hypotheses listed have a score of seven (out of nine) or better, meaning they are backed by at least one high quality quantitative study. Interestingly, theories with the high levels of empirical support score include positive inducements, political reforms, media strategy, law and order, showing restraint, government legitimacy, indirect methods, and limits on the use of force.⁶⁷ These methods may succeed because they work to undermine the political attractiveness of an extremist organization's message, which is another highly robust finding.⁶⁸ Conversely, factors associated with increased P/CVE activity include the appearance of favoritism, targeting errors, widespread government repression, negotiation, competition over resources, and US military aid.⁶⁹

In essence, counterterrorism represents the application of military strategies to the aims of criminal justice. The strategic aims of CT operations, such as securing roads and highways, may align with greater access to justice. This is particularly true of the Sahel, where mobility presents a key resource for communities in the arid hinterland. Cross-border mobility and control of strategic networks, as opposed to territory, is important for security forces and rebel factions alike.⁷⁰ In this sense, CT is a pure expression of the realist maxim that war is another means of policy. Yet whereas Clausewitz conceived the immediate object of a limited war to be disarming an opposing nation, with the ultimate aim of directing its foreign policy in a favorable direction, the object of counterterrorism is perpetual submission.

From an international relations perspective, counter-terrorism operations generate several important risks. The first is that they undermine the political-economic conditions for peace, because the presence of Western military forces raises the historic spectre of colonialism, reinforcing grievances against national elites. This effect is especially pernicious when external actors are accused of the very human rights abuses they are ostensibly tasked to prevent, as when personnel of the United Nations

⁶⁶ <https://www.start.umd.edu/data-tools/iveo-knowledge-matrix>

⁶⁷ idem 30, 69, 114, 136, 145, 172, 176

⁶⁸ idem 120

⁶⁹ idem 39, 98, 126, 165, 177

⁷⁰ OECD (2014), 193; Gow, Olonisakin, and Dijkhoorn (2013)

Organization Mission in the Democratic Republic of the Congo (MONUC) were accused of sexual violence toward Congolese women and girls, including minors.⁷¹

The second risk is that counter-terrorism strategies will increase the likelihood that an international incident will undermine political support for increased engagement. A prominent example occurred in October 2017, when four U.S. soldiers were killed during a CT operation in Niger, prompting Congress to question the scope of American engagement in the Sahel (Callamachi, Feb. 20, 2018). While the effort to capture “terrorist” leaders and bring them to justice may seem like a laudable policy goal, the process by which these policies are enacted may prove to be more important than the outcome. CT operations incentivize state secrecy and mission creep, leading to belated debates about the proper scope and nature of Western military engagements in fragile states. As one critic of counterterrorist strategy in the Sahel argues:

Counterterrorism initiatives can easily fall into the trap of bolstering state security units that then act with impunity and ignore human rights. Most of these initiatives have failed and despite the increased militarization and continued counterterrorism efforts, instability and insecurity are widespread in Mali and across its borders.... Militarization continues to be the principal approach to addressing the crisis in the Sahel. Despite this, or perhaps because of it, terrorism in West Africa has spread geographically, finding more soft targets.... Of the four militaries that the US-trained under the Pan-Sahel Initiative, three (Mauritania in 2003, Niger in 2010, Mali in 2012) overthrew democratically elected governments and the fourth (Chad in 2006) split the country in civil war.⁷²

In this view, counterterrorism leads to a pernicious compromise, now familiar from the U.S. engagements in Afghanistan and Iraq, wherein great power states commit too deeply to avoid meddling in domestic affairs, yet not decisively enough to shape the final outcome of a conflict. In a worst-case scenario, CT operations can exacerbate a security crisis because they inject money and weapons into political contexts

⁷¹ UN News (4 April 2016)

⁷² Wing (2019) 110, 113

where decades of poor governance and economic mismanagement have produced unstable power relations within the military. CT and COIN both rely upon blending the security, police, and development functions of the state. Ironically, providing military aid for a corrupt regime can even undermine its own security, because it empowers disaffected elements within the military.

The prosecution of war has always entailed capturing and detaining prisoners. In a limited war, these practices have been ancillary to strategic objectives like controlling territory or resources, with the aim of establishing a stable balance of power. In counter-terrorist operations, however, this police function is paramount. CT strategies therefore pose an inherent challenge for the rule of law, because they create powerful incentives for opaque governance, discriminatory policing, preventive detention, and extrajudicial killing. With no clear endgame in sight, the global war on terror has expanded to include local conflicts from Mali and Libya to Yemen and Syria; it thus increasingly resembles war in its absolute character, as Clausewitz conceived it, wherein nothing of permanent value has been achieved until the enemy is totally disarmed, both politically and militarily.

How can global powers ever hope to quell political violence on so many local fronts when war itself contributes to poverty and insecurity, repression and impunity, displacement and resentment? The following section addresses strategies for mitigating the risk that military assistance will further erode the rule of law, perpetuating the cycle of violence.

b. Preventing/Countering Violent Extremism (P/CVE)

As of October 2016, the United States had spent \$100 million on P/CVE in West Africa, administered through USAID, and there is a strategic framework to continue funding programs through 2021.⁷³ Preventing/Countering Violent Extremism (P/CVE) extends the logic of deterrence and prevention into civic space. Whereas CT merges a state's criminal justice system with its military capabilities -- trying suspected terrorists in military court, augmenting the intelligence-gathering powers

⁷³ USAID (2016)

of national police, targeting extremist leaders for capture or extrajudicial killing -- in contrast, P/CVE blends a state's policing function with its power to govern by consent. This opens a space for "strategic ambiguity," wherein the P/CVE framework may permit officials to pursue realist political and military objectives.⁷⁴ Because P/CVE attempts to intervene early in the sequence of radicalization, before an extremist plot has progressed to the point where there is evidence of conspiracy, it reverses the classical relationship between state coercion and legitimate governance. If war is "politics by other means," then P/CVE might be considered war by political means, for it aims to disarm the extremist voluntarily and peremptorily. In strategic terms, it reflects an absolutist policy that "writes notes" instead of "fighting battles."⁷⁵

P/CVE represents progress for the rule of law to the extent that it offers a genuine alternative to CT, since preemptive detention and extrajudicial murder are, by definition, violations of fundamental rights and due process. Nevertheless, the Brennan Center for Justice has concluded, in the context of U.S. domestic policy, that P/CVE programs conflate legitimate political grievances with predictive factors that are based upon "junk science."⁷⁶ In part, this reflects the difficulty of tying psychological research to social indicators; while the outputs of P/CVE programs are readily measured, their outcomes are harder to define. A report by the U.S. Government Accountability Office (GAO) found that "the federal government does not have a cohesive strategy or process for assessing the overall P/CVE effort. Although GAO was able to determine the status of the 44 P/CVE tasks, it was not able to determine if the United States is better off today than it was in 2011 as a result of these tasks."⁷⁷ Given the propensity of P/CVE programs to undermine fundamental rights like freedom of association and expression, there is reason to believe P/CVE could further aggravate political grievances in states with weak rule of law.

This cautionary note should be taken as a repudiation of P/CVE. In truth, the state of current research is inconclusive regarding the impact of particular interventions, in part because the underlying

⁷⁴ Thiessen (2019)

⁷⁵ *supra*, Clausewitz, ch. 125

⁷⁶ Brennan Center (2019)

⁷⁷ GAO (2017)

causal mechanisms remain poorly defined.⁷⁸ In a review of evaluation methods, researchers at the United States Institute for Peace emphasize the difficulty of proving negative causation in P/CVE -- i.e., demonstrating that a particular act of violence had been prevented -- because there is no clear link between subjective indicators (like holding an “extreme” religious view) and a propensity for violence.⁷⁹ Yet there is anecdotal evidence that P/CVE programs can have a profound effect on individual outcomes, as reported by program participants themselves.

c. Peacebuilding

In contrast, peacebuilding attempts to build the capacity of nations to resolve conflict, weather external shocks, and avoid new outbreaks of violence. Its framework differs from P/CVE because it does not focus primarily upon individual agents of violence; rather it seeks to foster conditions of resilience. Consequently, there is an emphasis upon local agency and a sensitivity to the likelihood that powerful external actors, even well-intentioned ones, can inflict further damage upon a fragile society by exerting undue influence over the course of its stabilization.⁸⁰ The governing metaphor here is not contagion but homeostasis: if CT imagines violence to be a contagion and P/CVE imagines it to be a chronic disease, then Peacebuilding imagines it to be a failure of systemic immunity.

A core component of peacebuilding efforts is economic development. Across the Sahel, the “lost decades” of the 1970s and 1980s were marked by debt crises, structural adjustment programs, and severe droughts.⁸¹ A lack of tourism investment and infrastructure separates the countries of North Africa, in particular Morocco and Tunisia, from sites in the Southern Sahel; in addition, tourism in the southern Sahara has been severely limited by Islamic terrorism and Toureg rebellions.⁸² In Mali, the effort to

⁷⁸ Holmer, Bauman, and Aryacinejad (2018)

⁷⁹ *ibid.*

⁸⁰ Coning (2013)

⁸¹ *supra*, OECD (2014), 88

⁸² *idem*, 58

stabilize the north of the country includes \$44 million dollars for the creation of a Northern Development Zone; however, it had not become operational as of December 2019, because the Malian government had yet to develop a comprehensive economic strategy, including a plan for the appointment of “regional councils” to oversee local expenditures, investments from the central government, and foreign aid.⁸³

One key element of the development agenda is infrastructure -- especially water, electricity, and roads. Mali and Niger have invested very little in their northern regions, particularly roads, education, health, subsidised foodstuffs, and petroleum products; nevertheless, the groups that engage in independence movements are often not the most marginalized; nevertheless, low-level recruits are often driven by more purely economic motives.⁸⁴ We might therefore ask whether demands for independence reflect a zero-sum struggle over an extractive economic system, while broad-based movements for democratic reform are more indicative of human development.

WASH Rights

In the 1990s and 2000s, major international donors pressured aid recipients to conform with the “neoliberal” or “Washington” consensus regarding public financing for infrastructure and social services. This trend was significant for the provision of essential utilities, including water, because it tended to shift the responsibility for construction and maintenance onto private contractors; however, governments continue to play a dominant role in the provision of water, and there has been a shift away from outright concessions towards more limited (e.g. technical) subcontracts following the 2008 financial crisis.⁸⁵ There has also been a growing movement to recognize a fundamental human right to safe drinking water and sanitation (WASH), reflected in the appointment of a UN Special Rapporteur. Of the seven countries surveyed in this study, Mauritania alone responded to the Special Rapporteur’s first round questionnaire in 2017.⁸⁶

⁸³ UNSC (2019), 7-8

⁸⁴ OECD (2014), 185

⁸⁵ Hendry 2014, 77-106

⁸⁶ <https://www.ohchr.org/Documents/Issues/Water/ServiceRegulation/States/Mauritania.pdf>

The issue of whether access to water is a human right is important to the rule of law (as well as to development policy) because it reveals a fundamental tension between property rights, e.g. the rights of landowners to irrigate their fields, and the government's responsibility to protect the personal rights of all citizens. A recent law in South Africa, for example, creates government programmes for "Free Basic Water" (FBW) and "Free Basic Sanitation" (FBSan); it also establishes minimum standards for the volume and quantity of services to be provided for the poor, granting them priority over the provision of other demands for water.⁸⁷ Water rights concretize the distinction between a thin conception of the rule of law -- one centred upon the formal relationship between markets and the state -- and a more robust conception that embeds the rule of law within a larger tradition of legal empowerment.⁸⁸

Petroleum

At least some of the interest in the 2012 Touareg rebellion may be attributed to its disruption of a planned pipeline in Mali, Niger, and Nigeria.⁸⁹ Mauritania began producing oil in 2006, and Niger began limited production in 2011; however, Nigeria is the dominant petroleum producer in the region and the continent as a whole, especially given the collapse of Libya's industry in 2011-12.⁹⁰ There has also been an influx of Chinese capital in the Sahelian petroleum industry, which may limit the capacity of traditional investors like the World Bank and OECD countries to apply high-level diplomatic pressure in exchange for development aid. According to the OECD, "In Sudan and in the Sahel, China has taken advantage of the pull-out by other oil companies... Chinese companies follow a different strategy. State-run, they can afford to make short-term investments devoid of the slightest profit on the hope of a return over the very long term, thus securing crude reserves."⁹¹ This echoes a broader concern about China's influence in Africa. It is worth noting, however, that there is some disagreement regarding the extent of China's corrosive effect on the rule of law in Africa.⁹²

⁸⁷ Hendry 2014, 87

⁸⁸ Golub, 2006

⁸⁹ OECD (2014), 102

⁹⁰ *idem*, 94-95

⁹¹ *idem*

⁹² Brautigam (2009)

d. Legal Empowerment

Legal empowerment acknowledges the importance of community for shaping expectations about the law, as well as the uncomfortable fact that collective identity can influence a particular legal outcome. Women and men may have different justice needs, as do urban dwellers and nomadic herders, children and adults, citizens and refugees. Indigenous groups, subsistence farmers, and industrial laborers may all suffer from the same lack of human capital; nevertheless, they will confront different practical and institutional barriers in the common quest for justice.

Women's empowerment deserves special emphasis in this context. The Sahel has some of the highest population growth rates in the world due to high rates of fertility, and its growth rates began outstripping North Africa in the period from 1990-00. Crude death rates have declined in tandem in North Africa and the Sahel; nevertheless, Mali and Niger have not undergone the kind of fertility transitions seen in Algeria, Libya, Morocco, and Tunisia. Bucking the regional trend, Mauritania has seen a modest decline.⁹³ While the youth bulge does pose political and security challenges for West Africa, the social outcomes of demography are not foregone. A growing workforce can make it easier to fund social protection for the elderly, and there is little evidence to suggest that large family sizes necessarily lead to increased poverty or lower investments in education.⁹⁴

IV. Policy Recommendations

In a major recent report developed in collaboration with the World Justice Project, the Open Government Partnership lists key policy recommendations for expanding access to justice among its member states.⁹⁵ They are reproduced here:

1. **Legal needs surveys:** Develop, implement, and publish the results of legal needs surveys to identify the nature and impact of legal problems, as well as paths to resolution, so that policymakers have a clear understanding of the justice solutions and reforms needed.

⁹³ OECD (2014), 78-83

⁹⁴ Banerjee and Duflo 2011, 103-132

⁹⁵ OGP 2019, 39-40

2. **Legal resource surveys:** Collect and analyze data on the availability of resources for people to resolve their legal problems. Make the data and analysis public.
3. **Non-lawyer contributions:** Establish legal authority and dedicated funding for non-lawyer contributions, such as community paralegals, to ensure independence and effective oversight. This might be through new or revised legislation, regulation, or policies by government and/or civil society actors.
4. **Access to information on resources:** Improve access to information about laws and procedures to enable individuals to identify their legal needs, identify sources of legal advice, and help themselves. This might be through online portal where appropriate.
5. **Specialized legal procedures:** Establish legal procedures to protect the rights of people with limited capacity or other vulnerability.
6. **Alternatives to courts:** Support non-court intensive solutions to legal problems, using technology when appropriate and feasible.
7. **Legal aid authority:** Create an independent legal aid authority that can establish, fund, staff, regulate, and evaluate the legal aid scheme. Consider a multi-stakeholder approach bringing in legal professionals and community representatives.
8. **Legal aid expansion:** Expand access to civil and criminal legal aid to improve accountability in the justice system. This may include expanding the provision of legal aid for problems that might not have adequate funding and expansion of partnerships with CSOs offering legal assistance.
9. **Programs for underserved communities:** Increase funding to existing legal aid services and establish new offices and services to reach isolated or underserved communities. Make budgets (and outcomes) transparent down to the program level.
10. **Cooperation to address legal needs:** Protect and deepen civil society partnerships, especially with civil legal aid providers. Launch working groups comprised of government and civil society members to identify legal reforms needed to improve justice delivery systems through legal assistance and the courts.
11. **Targeted partnerships:** Strengthen and institutionalize partnerships between CSOs and law enforcement, when appropriate, to better serve underserved communities and populations like victims of gender-based violence.
12. **Legal aid funding:** Expand and diversify financing for legal assistance at national and subnational levels. This might include public sector partnerships to shore up justice interventions securing basic needs like housing, employment, and access to public services.
13. **Pro bono services:** Revise legal profession regulations to support private sector lawyers' provision of services to low-income and vulnerable individuals for free (i.e., pro bono) where legal aid is not provided as a right.
14. **Law clinics:** Revise legal profession regulations to enable law students under the supervision of licensed attorneys to provide legal services to low-income and underserved individuals through law school clinics or with civil society organizations.
15. **Training of legal professionals:** Fund and launch training programs for legal aid lawyers, paralegals, and pro bono volunteers to improve their legal skills and knowledge in legal areas impacting low-income and underserved individuals.

16. **Plain language:** Reform legal systems to use clear and plain language in legal proceedings.
17. **Pretrial detention:** Limit use of pretrial detention to instances of serious public safety or substantial risk of a criminal defendant's failure to return to court.
18. **Specialized courts:** Launch specialized courts or tribunals that focus on particular areas of the law. This may also include involvement mental health professionals or substance use disorder services in the resolution of legal problems.
19. **Training judges:** Establish or enhance judicial training to ensure that judges are knowledgeable about the law and best practices in court procedures.
20. **Special procedural mechanisms:** Reform procedural mechanisms to make it easier to bring legal problems to court, such as allowing class actions or banning mandatory non-judicial arbitration.
21. **Children and juveniles:** Apply the best interests of the child standard when children are the subject of court proceedings, either as a victim or defendant.
22. **Data collection:** Improve data collection of justice system metrics, including the number and types of courts, court caseloads, and the number and type of legal actors (such as judges, prosecutors, legal aid, and paralegals).
23. **Targeted evaluation of high-priority areas:** Fund measurement and evaluation of the justice system as a whole and priority cases like housing, employment, and access to public services.
24. **Targeted evaluation of special populations:** Evaluate whether marginalized communities (e.g., women, indigenous communities, ethnic minorities, religious minorities, or people with disabilities) are disparately impacted by the justice system to identify areas of reform.
25. **Ombudsman:** Establish ombudsman offices to hear complaints on the judicial system and/or its actors.
26. **Grievance procedures:** Working with the national bar or law societies, improve or develop grievance procedures related to the practice of law. This can enable individuals to file formal complaints related to their legal representation, a prosecutor's conduct, or judicial officer's conduct.

These recommendations form an important methodological framework for this qualitative study of access to civil justice in the Sahel; they comprise a taxonomy of interventions, which will be used to classify nominated programs and policies. For the sake of simplicity, we might condense this menu of policy options to three core recommendations:⁹⁶

⁹⁶ These headline recommendations are adopted from a speech given by Betsy Andersen to the Japanese International Cooperation Agency (JICA), February 2019

- a. Target most prevalent legal needs: consumer issues, housing, debt

In order to design evidence-based solutions for access to justice in the Sahel, it is important to build upon existing knowledge about legal needs in the region. National legal needs surveys are expensive and difficult to implement, so they have been pioneered in rich and middle-income countries.⁹⁷ The World Justice Project (WJP) has significantly expanded the coverage of legal needs, including households from 101 countries as part of its 2017-2018 General Population Poll (GPP).⁹⁸ Building upon the “justice journey” model, WJP reported the prevalence of legal problems and capabilities, sources of legal help, status of legal problems, process of resolution, and hardships experienced for each of the countries covered by the access to justice module.⁹⁹ A discussion of the seven countries included in this study are included in Appendix I: Analysis of Summary Statistics from the 2017-2018 Access to Justice Survey Module. At a national level, WJP has also made significant headway toward measuring the justice gap in 101 countries and jurisdictions, including seven countries which intersect the West African Sahel: Burkina Faso, Cameroon, Mali, Mauritania, Niger, Nigeria, and Senegal.¹⁰⁰ Along similar lines, the Hague Institute for Innovation of Law (HiIL) has published sub-national analyses of justice needs and satisfaction in thirteen countries to date, including Mali and Nigeria.¹⁰¹ More recently, a group of legal scholars has undertaken a qualitative study that would use reports from country, regional, and thematic coordinators to prepare a global survey of access to justice; however, they have yet to publish any findings.¹⁰²

While these studies are a strong start, there is clearly a need for more quantitative data about justice needs in developing and emerging markets, especially in the Middle East and North Africa (MENA), which includes many of the world’s most challenging environments for the rule of law. Ideally,

⁹⁷ Sandefur et al (2013), 7-8

⁹⁸ World Justice Project, *Global Insights on Access to Justice* (2019)

⁹⁹ *idem*, 114-118

¹⁰⁰ *ibid.*

¹⁰¹ *Justice Needs and Satisfaction in Mali 2018* (March 11, 2019); *Justice Needs and Satisfaction in Nigeria 2018* (September 12, 2018)

¹⁰² Global Access to Justice Project (2019)

the Sahel would benefit from the kind of granular data that has enabled policymakers to make state-by-state or even jurisdictional comparisons in other conflict-affected countries.¹⁰³

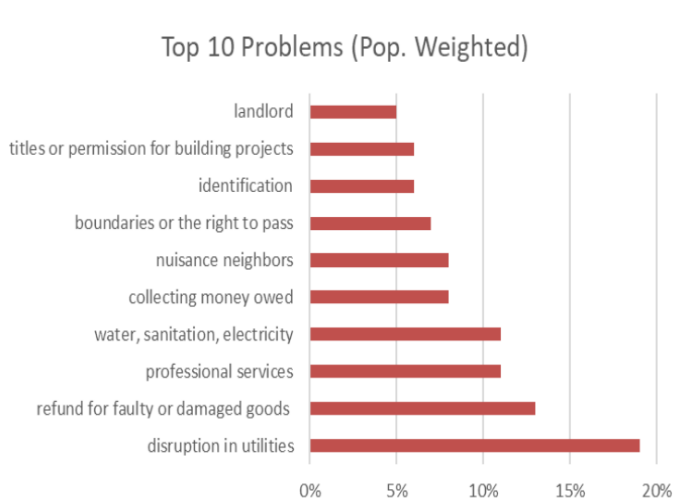
More research is needed to peer beyond these headline findings. Higher powered surveys are needed to identify, in a statistically meaningful way, precisely where civil justice pathways break down, whom these failures affect, and how a given intervention might bend a given trendline. This effort will require a significant investment in research to determine needs and measure program outcomes using randomized control trials (RCTs) and quasi-experimental methods. National surveys are a good start, but many countries experience a sharp disparity between jurisdictions. It is particularly difficult to determine legal needs in contexts where local conditions may skew expectations about cost, time-to-resolution, or fairness of process. In Mauritania, for example, there is a deep-rooted system of racial slavery, which persists today in the tens of thousands.¹⁰⁴ This poses obvious logistical hurdles for legal needs assessment: how can researchers ensure that a survey accurately captures the whole of Mauritanian society when it remains taboo for an enslaved person to speak openly? It is therefore crucial to link subjective indicators with objective metrics for program performance. Often, this involves cross cutting capacity building: for example, providing IT investments and technical support for local governments and national statistical agencies.

Nevertheless, it is possible to draw some preliminary conclusions about the prevalence of civil legal problems in the Sahel. Summary statistics for the access to justice survey module indicate that utilities, consumer problems, money and debt, and land were the most prevalent across the region as a whole.¹⁰⁵ Figure 1 indicates the frequency of legal problems encountered across all seven countries included in the Sahel subset, weighted by population for each country:

¹⁰³ World Justice Project (2018); Maleskey, Dulay, and Keesecker (2019)

¹⁰⁴ Minderoo Foundation (2018)

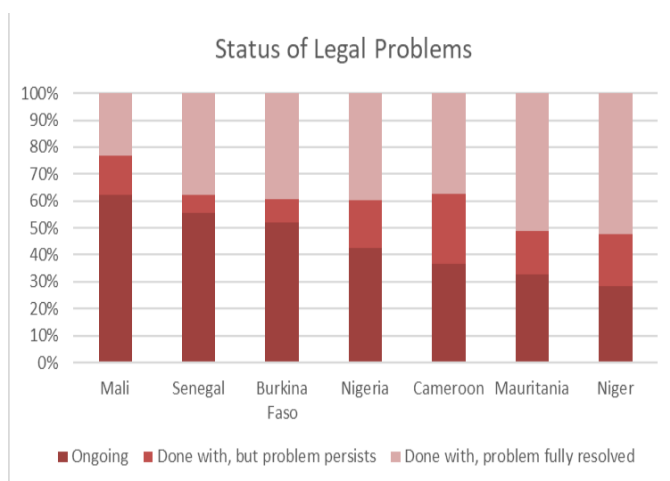
¹⁰⁵ World Justice Project (2019e)



[Figure 1]

Across all seven countries included in the Sahel subset, the top three justice problems all pertain to consumer issues, including utilities, faulty or damaged goods, or inadequate professional services. Second most frequent were problems with money and debt, including difficulties paying bills or collecting money owed. Other frequent problems included issues with community and natural resources, housing issues, and issues with land.

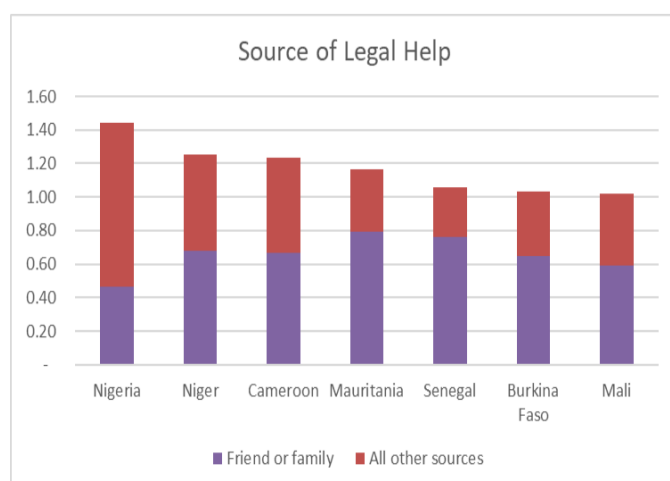
Furthermore, many legal issues remain unresolved. Figure 2 represents the status of legal problems as a proportion of respondents who indicated they had encountered a legal problem in the last two years:



[Figure 2]

Among respondents who reported experiencing a civil legal problem in the past two years, there was significant variation in the proportion who responded that their problem was ongoing or had not been fully resolved. Mali reported the highest percentage of unresolved legal problems, while Niger reported the lowest.

One reason why respondents were unable to resolve their legal problems is that they did not receive adequate professional help. Figure 3 represents the percentage of respondents, among respondents who indicated they sought help, who sought help from friends and family as opposed to all other sources of assistance:

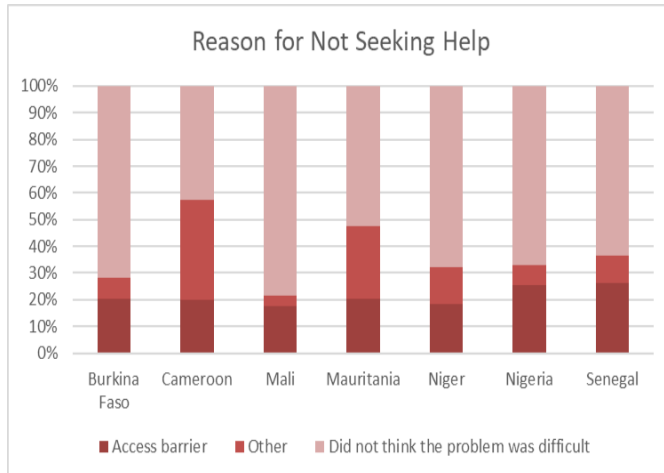


[Figure 3]

In all seven countries, advice from friends or family was the most frequent source of legal help. This trend was especially pronounced in Mauritania and Senegal, where rates were 4x higher than all other sources of help combined. Nigeria had the highest rate of respondents who sought help outside the circle of friends and family, and it was the only country where outside sources surpassed "friend of family" in the aggregate.

In itself, the scant utilization of legal services in a country like Mali does not indicate a barrier to accessing justice. It is possible that respondents did not consider their problems difficult, or they felt confident in their ability to resolve them through traditional means. It is therefore important to consider the extent to which respondents wished to receive help but were hindered from doing so because of a real

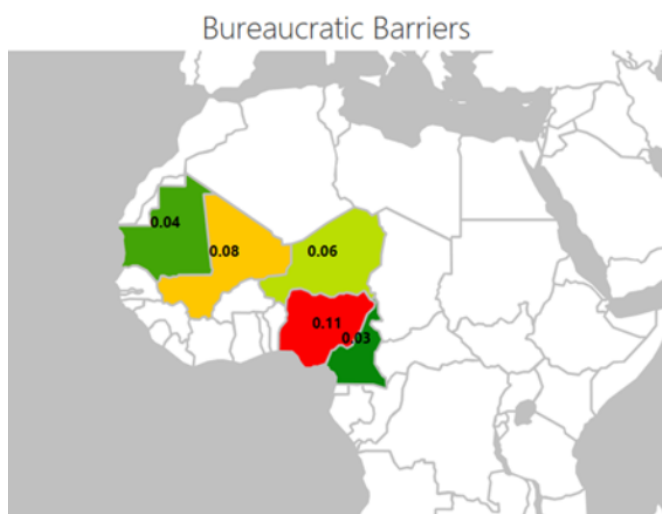
or perceived barrier such as cost, distance, corruption, intimidation, or bureaucratic inefficiency. Figure 4 represents the portion of respondents, among respondents who did not seek legal help, who indicated some barrier to access as their reason for not seeking legal help:



[Figure 4]

Across all seven countries, barriers to access were cited as a significant reason why some respondents did not seek outside help to resolve their legal issue. The trend was fairly consistent, ranging from a low of 18% in Mali and Niger to a high of 26% in Nigeria and Senegal. Cameroon and Mauritania recorded a large number of respondents who cited "other" as their reason for not seeking outside help, suggesting a need for additional research in this area.

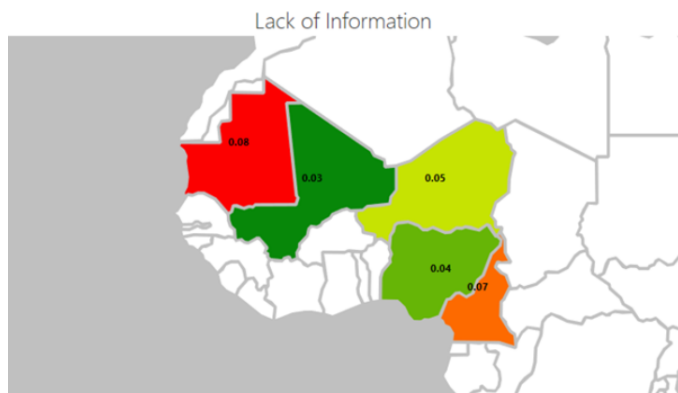
The most prevalent barrier to accessing help was bureaucratic inefficiency, though this varied significantly between countries. Figure 5 represents the percentage of respondents, among all respondents who (1) encountered a legal problem but (2) did not seek legal help who (3) selected "would have taken a long time or a lot of bureaucratic procedures" as their reason for not seeking legal help:



[Figure 5]

The highest incidence was recorded in Nigeria (11%) and Mali (8%), while the lowest incidence was recorded in Cameroon (3%) and Mauritania (4%). Interestingly, these responses may reflect differing cultural expectations about the delivery of government services. For example, Nigeria has the largest economy in Africa, so its government also has the greatest capacity to generate tax revenue for judicial services. In contrast, Niger is one of the world's poorest countries, so its citizens may be more accustomed to state incapacity. These figures are therefore indicative of public perceptions rather than objective measures for service delivery. Yet when analyzing the link between poor access to justice and increased extremism, perceived governance may very well be what matters.

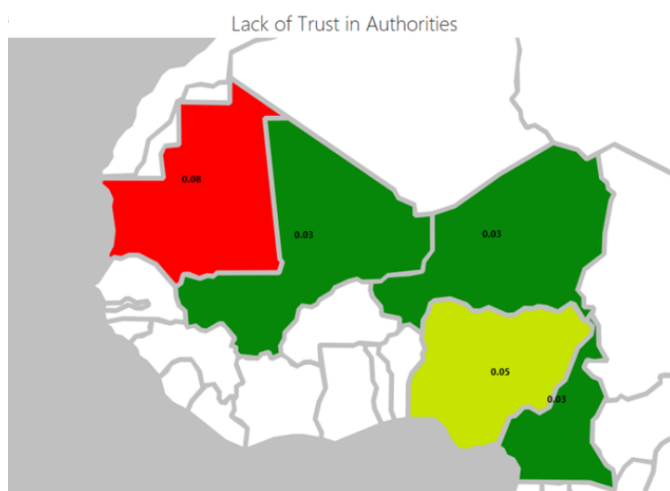
In contexts where state capacity is limited, self-help becomes all the more significant. Figure 6 represents the percentage of respondents, among all respondents who (1) encountered a legal problem but (2) did not seek legal help who (3) selected "did not know what to do, where to go, or how to do it" as their reason for not seeking legal help:



[Figure 6]

The highest incidence was recorded in Mauritania (8%) and Cameroon (7%), while the lowest incidence was recorded in Mali (3%) and Nigeria (4%). These figures suggest a strong need for civic and legal education to be bundled with literacy programs in Mauritania, which has one of the world's lowest rates of adult literacy at 53%.¹⁰⁶

Perhaps the most direct link between unresolved legal needs and the growth of extremism occurs when someone who would seek legal help fails to do so because they do not trust in the relevant authorities. Figure 7 represents the percentage of respondents, among all respondents who (1) encountered a legal problem but (2) did not seek legal help who (3) selected "did not trust the authorities" as their reason for not seeking legal help:



¹⁰⁶ UNESCO Institute for Statistics (2017)

[Figure 7]

The highest incidence was recorded in Mauritania (8%), while the lowest incidence was a three-way tie between Mali, Niger, and Cameroon (3%). These numbers are particularly telling in the case of Mauritania, which has extremely low scores for several related sub-factors for civil justice in the 2019 *Index*, including “no corruption,” “no improper government influence,” and “effective enforcement.”¹⁰⁷

How might these unresolved legal issues contribute to fragility? In a development context, urgent consumer issues include the provision of utilities and the regulation of essential goods and services. There is a need for reliable water and electricity, as well as improved quality standards for medicines, healthcare, and agricultural inputs. Often, this blurs the line between A2J and anti-corruption, particularly as the latter involves high-level political corruption. Yet it can also be the case that utilities and government itself are the victims of inadequate civil capacity: many developing countries experience a “tragedy of the commons” in cases of tax avoidance or refusal to pay for services. For instance, a recent analysis by the Brookings Institution emphasizes the importance of “tax equity” when implementing the Addis Tax Initiative to finance the Sustainable Development Goals in Africa.¹⁰⁸ This is a hard problem because weak governments often rely upon consumption taxes to fund development, meaning domestic resource mobilization (DRM) may exacerbate poverty even as it reduces inequality through transfers of wealth.¹⁰⁹

Housing issues relate to broader disputes around access to land and natural resources. Climate change is placing tremendous pressure on subsistence communities in Sub-Saharan Africa and elsewhere, inflaming traditional disputes between pastoral, agricultural, industrial, and extractive communities. In the West African Sahel, an emphasis upon agricultural development has exacerbated tensions between new national elites, who tend to settle in major coastal cities, and the nomadic herding communities who have historically dominated the region’s political and cultural capital.¹¹⁰ Sociology has long known that a

¹⁰⁷ World Justice Project (2019c), 103

¹⁰⁸ Prichard, Wilson et al. (2019)

¹⁰⁹ Lustig (2017)

¹¹⁰ Benjaminsen and Ba (2018)

perceived decline in relative social status, such as we are currently witnessing among Touareg herders in Mali and rural whites in the United States, can better predict extremism than does absolute poverty.¹¹¹ Digital land registries may help to defuse these tensions, but there are practical hurdles for implementation and enforcement within corrupt political environments. In cities, housing policy also has significance for the business environment confronting small and medium enterprises (SMEs). Many low-income entrepreneurs, particularly women, operate one or more informal businesses from home. Creative zoning laws can help protect them from extortion and intimidation; however, they can also dis-incentivize expansion into the formal sector.¹¹²

The growth of information technologies is revolutionizing access to credit and debt in the developing world. According to a report by Gallup and the World Bank, cell phone ownership rocketed past the 80% mark in South Africa, Nigeria, Senegal, Kenya, and Ghana over the past decade.¹¹³ Fintech startups like Nigeria's Bankly are working to expand formal banking opportunities to the poor. Smartphones continue to be a minority, however, and internet access lags behind cellphone adoption. Text-based services therefore continue to be an important tool for expanding access to financial services and legal information. For example, "mobile money" technologies M-PESA in Kenya and Tanzania are streamlining electronic commerce. Programs should work to expand access to these crucial tools of communication, as there are significant disparities in cell-phone ownership across genders and among developing economies.

While seldom the most prevalent type of legal problem, employment issues can have an outsized impact on financial security and communal stability. When poor people lack access to dignified labor, they may resort to illegal practices that harm the environment, fuel corruption, or undermine human security. In many cases, poor labor standards and the perception of economic injustice are direct contributors to extremism, xenophobia, and violence. In Nigeria's Zamfara State, for instance, the federal

¹¹¹ Rush (1967)

¹¹² WAGE Consortium (2019)

¹¹³ International Bank for Reconstruction and Development/The World Bank (2018)

government recently banned artisanal mining for gold and lead, ostensibly to curb banditry, and handed all mining operations to a special task force within the security services.¹¹⁴ Yet banditry is a consequence, not simply a cause of Nigeria's failure to deliver justice for all. In 2010, crop failures (linked to climate change) and a spike in gold prices (linked to the global financial crisis) spurred a rise in unregulated mining practices among the area's desperately poor. Inadequate labor protections led to high rates of lead exposure, which prior research has associated with an uptick in criminality. Yet despite an international outcry, the administration of Nigerian President Goodluck Jonathan was slow to provide funds for cleanup.¹¹⁵ Hundreds of adults died or became infertile. But mining is a family occupation in Zamfara, as it is in much of Africa; thousands of children work unprotected in the mining sector, picking up lead-laden ores with bare hands and carrying them home for processing. And lead brutalizes the body of a child. Hundreds of children died from lead poisoning in Zamfara, and many survivors were stricken with blindness, paralysis, organ failure, and irreversible neurological damage.¹¹⁶

One of the most robust findings of the policy community is that special emphasis should be placed on programs and policies that benefit specific vulnerable populations, such as children and the poor. From a civil justice perspective, this could programs that provide legal services for children, women, migrants, or victims of discrimination. However, it should also include legal empowerment initiatives that advocate on behalf of these groups, as well as legal reforms that have secondary impacts upon their capacity to pursue education and employment. Such considerations may be at odds with development imperatives, so regulators should carefully weigh the tradeoffs incurred when the forces of economic globalization intersect with the interests of working women and school-aged children. Governments and their corporate partners can implement Children's Rights Impact Assessments when

¹¹⁴ Tukur (2019)

¹¹⁵ Mark (2017)

¹¹⁶ Thurtle et al (2014)

investing in local economies, and they can promote the adoption of non-state market-driven certification programs.¹¹⁷

Targeted interventions should not come at the expense of systematic reform and movement building. Civil justice must connect with state capacity and transparent governance. The reverse is also true. If there is a perception of official corruption, it can undermine people's willingness to participate in the legal process; if the criminal justice system is in disarray, it can incentivize lawless means of redress; if the roads and highways are insecure, it becomes perilous to seek legal remedies beyond one's immediate community. In Senegal and Burkina Faso, local and international NGOs have collaborated with law enforcement agencies to fight traffic corruption and improve road safety.¹¹⁸ The program aims to bring a community approach to policing the border region, helping to foster local trust in government. If successful, it will have positive implications for security and countering extremism. But safe roads and confidence in government are also relevant for access to justice, since dangerous roads and suspicion of government can prevent someone with a legal problem from seeking outside help.

b. Emphasize civic education and legal information strategies

This should be a "whole of society" effort. Many training programs focus on judicial officials and the police; however, law faculty can also reform their curricula to put clinical practice at the center of theoretical training. In Nigeria, the Network of University Legal Aid Institutions (NULAI) is matching law students in legal aid clinics where they receive experience managing real cases.¹¹⁹ Prisoners in Kano state are receiving free legal representation – some are seeing a judge for the first time after years of imprisonment – through a program that helps local government implement the country's new criminal

¹¹⁷ Jodoin and Pollack (2019)

¹¹⁸ Partners Global (2019)

¹¹⁹ <https://namati.org/network/organization/network-of-university-legal-aid-institutions-nulai-nigeria/>

justice act.¹²⁰ Building upon the "islands of integrity" framework, such programs operate under the assumption that positive actors can be found within even the most dysfunctional governments.

Commercial labeling and disclosure laws can empower consumers and prevent financial predation. One-stop service providers can empower victims of marginalization, displacement, and violence. There is a tremendous untapped potential for civics in secondary and tertiary education, including within technical fields such as engineering. In Tunisia, a wave of radicalization has followed discontentment with the young democracy's failures to deliver economic progress for all. In response, a local NGO has developed a curriculum to counter violent extremism in the schools. It brings "peace ambassadors" into rural classrooms, hosting tea sessions where they dialogue with high school students about the dangers of extremist ideology.¹²¹ According to the program's founder, the program has gained credibility by partnering with religious teachers and student leaders.¹²²

Storytelling and visual media afford powerful tools for behavior change, especially in contexts where formal literacy is an obstacle to legal education. Documentaries, talk shows, graphical representations, local radio, and community theaters can transcend barriers of class and language. They can often grant a panoramic view of issues that are interlinked. For example, Humanity United, one of several foundations supported by the Omidyar Group, has funded investigative journalism looking at the problem of modern-day slavery through a holistic lens. Stories from the series connect hot-button issues, such as sexual trafficking and child labor, with less visible phenomena like economic migration, forced labor in the developed world, and the slavery embedded within international commodity flows.¹²³ Not only can such programs disseminate information about rights and services; they can foster positive social norms around gender-based violence, inter-communal relations, and tolerance for minorities. In Nigeria, U.S. taxpayers have supported a new satellite channel, AREWA 24, which provides high quality

¹²⁰ <https://www.partnersglobal.org/program/greater-access-to-defense-and-justice-gadget/>

¹²¹ <http://www.idhtunisia.org/>

¹²² Jeblaoui (2020)

¹²³ <https://www.theguardian.com/global-development/series/modern-day-slavery-in-focus>

television in the Hausa language.¹²⁴ AREWA 24 offers programs, such as “Africa Eye,” which challenge extremism and promote the rule of law. Yet this is not merely pro-western propaganda; there are high interest offering in a variety of genres for children and adults, including “Kannywood” dramas depicting the ordinary concerns in the Hausa speaking community.¹²⁵ When designing for poor communities, however, it is important to consider technological barriers confronting creation and distribution.

- c. Invest in collaboration with non-legal service providers: social services, public health, schools, religious institutions

This point is especially important in fragile and conflict-affected countries. In these cases, international donors have channeled the bulk of their assistance into development aid, direct humanitarian relief, and capacity building for the security sector. Yet unless these efforts incorporate rule of law in the design phase, they can further destabilize fragile communities over the long term. In particular, development projects may take it for granted that local communities have the capacity to transact land sales, leading to political conflict about who should benefit from the economic windfall.

In a book that is overall quite positive about the role of Chinese investment in Africa, for example, Deborah Brautigam recounts the story of a state-backed sugar plantation and factory in Magbas, Sierra Leone, which ran into financial trouble when local villagers became restive about the duly contracted appropriation of agricultural land. Brautigam recalls:

The villagers were asking that the Chinese be better corporate citizens, invest in social development projects, deliver social services that the local government was failing to provide. But they were also concerned about their land. The Chinese managing director, George Guo, told me bluntly: ‘This farm needs to run at 12,000 metric tons for sugar to be economical. This year we were at 9,000 metric tons. *We need to expand the farm area.*

¹²⁴ Sewall (2015)

¹²⁵ <https://arewa24.com/en/>

This is in the lease contract.’ But who spoke for the landowners? Who agreed to give up land for the expansion, and with what compensation for local villagers? Who was actually receiving the rent paid annually for the land by [the Chinese venture]?” In this case, Brautigam attributes the failure to the recipient state, which used eminent domain to appropriate local land in a rush to receive foreign aid.¹²⁶

Given the likelihood that twenty-first century military conflicts will continue to feature violent extremism and insurgent tactics, it remains imperative that global powers place the rule of law at the heart of military cooperation. Over the past decade, the United States has expanded its military engagement in Africa, with the creation of U.S. Africa Command (AFRICOM) in 2007.¹²⁷ Critics of the expanded U.S. presence note that insufficient attention to rule of law has led to human rights abuses and further instability, most notably when leaders of a 2012 coup d’etat in Mali were revealed to have been trained in the United States.¹²⁸ More recently, the United Nations ejected its own Kenyan peacekeepers from the Central African Republic, where they had been accused widespread accusations of rape and sexual exploitation.¹²⁹ In response, there has been a growing recognition that military assistance should incorporate training on human rights law and mechanisms to prevent abuses. Yet the effort to embed access to justice into the tools for managing conflict – providing free representation to detainees, for instance, or building legal aid into existing mechanisms for conflict resolution – remain largely uncharted. Such efforts could be especially important for refugee populations and internally displaced persons, as simple interventions like registering births or providing identification can have a profound impact on a population’s ability to work, emigrate, or start a business.¹³⁰ Over the long term, these measures can promote integration and prevent radicalization, as refugees denied access to local justice mechanisms can become “wards of international

¹²⁶ Brautigam, 2009, 262

¹²⁷ Ploch, 2011.

¹²⁸ Whitlock (2012)

¹²⁹ <https://www.hrw.org/news/2016/02/04/central-african-republic-rape-peacekeepers>

¹³⁰ Commission on Legal Empowerment of the Poor and United Nations Development Program (2008)

law,” in the words of one ethnographer studying legal agency in a West African refugee camp: “people deeply embedded in the international legal system, but alienated from local law.”¹³¹

While the overall strategy for closing the justice gap should be to design “people-centered” solutions, it is important to bear in mind that local NGO’s and CSO’s may also benefit from civil legal assistance as well. In many countries, repressive governments have weaponized financial and administrative requirements, using them as tools to stifle opposition and constrict the civic space.¹³² For the past six years, the Thompson Reuters Foundation has supported these organizations through an international pro bono network known as TrustLaw. With staff in nine countries, TrustLaw provides research, tools, and legal assistance to NGOs and social enterprises around the globe.¹³³ In general, collaborations should entail a long-term investment of financial and technical support, including plans for capacity building and leadership development, rather than short-term funding. In addition to building tools for incorporating A2J into programs, the legal community can also trim the development overhead by helping grassroots organizations navigate the complex legal requirements of international granting institutions.

d. Develop capacity of paralegal and non-lawyer assistance providers

In many respects, community legal workers perform the front-line labor needed to close the global justice gap. In some administrative courts, for example, they can have a large impact on case outcomes simply showing up for scheduled court dates. In poor countries, paralegals often possess the unique blend of technical competence and local familiarity to help poor people resolve their most pressing legal problems.¹³⁴ In rich countries, empirical legal studies have found that paralegals can be particularly effective in helping clients navigate procedural challenges or highly technical aspects of law; however,

¹³¹ Holzer, 2013

¹³² Amnesty International, 2019

¹³³ TrustLaw, 2019

¹³⁴ For an overview, see Maru and Gauri (2018)

they may lack the theoretical training to make novel legal arguments or challenge judicial rulings.¹³⁵ In this respect, non-lawyer representation encounters some of the same disadvantages of pro se litigation, and it may even bias some rulings.¹³⁶ In either scenario, outcomes can benefit from an activist judge who is willing to provide counsel from the bench.¹³⁷

For example, Nigeria has a federal system, which makes it challenging to enact sweeping access to justice reforms at the national level. The legislature passed the Legal Aid Act (2011) and Administration of Criminal Justice Act (2015); however, these new laws have been implemented on a state-by-state basis. Local governments struggle with case management, and detainees may go years without seeing a judge or even being arraigned. In response, a Nigerian NGO is working to build capacity for local implementation with support from the MacArthur Foundation and the United States Bureau of International Narcotics and Law Enforcement Affairs (INL). The Network of University Legal Aid Institutions (NULAI) collaborates with a range of stakeholders (law students and faculties of law; police and corrections officials; the judiciary, the department of justice, private defense attorneys) to ensure that case management adheres to the new statutes.¹³⁸

From a policy standpoint, it is important to distinguish between the professionalized variety of paralegals found in most rich countries and the “barefoot lawyers” working in the developing world. The former are often highly educated and technically adept in particular legal fields, while the latter tend to have informal training but are deeply embedded within a community. It is also important to balance the cost of regulation against the need for high ethical standards among non-lawyer providers, especially when their assistance is bundled with other services such as human resources, as market pressures can incentivize inadequate representation.¹³⁹ And because paralegals may lack the requisite education to

¹³⁵ Sandefur, 2015

¹³⁶ Quintanilla, Allen, and Hirt (2017)

¹³⁷ Carpenter, Mark, and Shanahan (2017)

¹³⁸ NULAI (2019)

¹³⁹ *supra* Carpenter, Mark, and Shanahan; Solas, 2019

catalyze changes in the law, it is important to couple expanded legal services with networks of pro bono or low-cost attorneys who can provide full representation in difficult cases, as well as engage in strategic litigation or advocate for systemic reforms. Indeed, this point emphasizes a crucial takeaway from the academic literature on access to justice. To close the justice gap, empirical research must go beyond the unidimensional analysis of legal supply and demand – and even multivariate cost/benefit analyses of a given legal intervention – in order to think systematically about the root causes and disruptive solutions that can transform the conditions of poverty.¹⁴⁰

¹⁴⁰ Pleasence, Balmer, and Sandefur, 2013

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