

# **THE VERTICAL INTEGRATION OF ORGANISED CRIME LINKED TO POLITICAL CORRUPTION: AN ECONOMIC ANALYSIS OF ASSET FORFEITURES AND HUMAN RIGHTS**

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## **A DOSSIER ABOUT LAW AND ECONOMICS**

**ABSTRACT:** The analysis presented in this study shows that greater scopes of criminal organizations' vertical integration within the legal economic domains – where, for example, a transnational criminal network acquires the *legal* economic capacity to generate its own raw materials, produce the goods or services to be later trafficked, transport the goods or services to be trafficked, distribute the good or service and also control the wholesale and retail legal businesses – always come hand in hand with political corruption within the electoral campaign financing and public procurement domains in countries with more acute state failures to legally and judicially dismantle criminal syndicates through asset forfeitures. In this context, this analysis extends previous findings by providing conceptual and empirical foundation to the greater diversification of organized economic crimes associated with a more intense degree of vertical integration in legal businesses that are politically protected through illegally funding electoral campaigns and

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by engaging in public procurement bids. Building on Williamson's theoretical frameworks, the vertical integration of legal economic activities by criminal enterprises is aimed at the criminal organizations' aim to reduce transaction costs linked to the frequency, specificity, uncertainty, bounded rationality, and opportunistic behaviour in market transactions within economic environments where other criminal organizations also compete with violence and with corruption to capture legal markets in order to support their more diverse criminal activities. Moreover, the theory and empirical verification presented here will show that greater vertical integration of economic activities of a criminal network in the midst of State failures to provide public services (such as state failures in providing *clean* political elections and court services) will also come hand in hand with the greater organized crime supply of quasi-public goods and services (such as alternative dispute resolution mechanisms) aimed at the demand of the most economically vulnerable segments of the population located within the geographic areas where this same organized crime group operates. In this scenario, a systemic violation of political and civil rights, such as the systemic violation of the human rights to access justice or to cleanly elect public officials, will act as a pre-condition for the social empowerment of organized crime. In short, there is a chain reaction within which judicial system failures foster more frequent provisions of *alternative dispute resolution mechanisms* supplied by organized crime armed groups that are linked to a greater diversification of criminal markets and a greater vertical integration of legal markets supporting the criminal markets. One of the main implications of this piece is that a more efficient judicial performance in forfeiting criminal assets will strengthen the human right to access justice for the most vulnerable segments of the population and will positively impact on the right to cleanly elect public officials with less organized crime interference. Therefore, a more efficient judicial performance in dismantling criminal networks will enhance punitive/deterrence against criminal enterprises but also prevent the growth of social and political protection bubbles within which organized crime thrives.

**KEYWORDS:** Organized Crime; Political Corruption; Forfeiture of Goods; Systems of Justice; Alternative Dispute Resolution Mechanisms (ADR).

**RESUMO:** A análise apresentada neste estudo demonstra que níveis elevados de integração vertical de organizações criminosas no âmbito jurídico-econômico – no qual, por exemplo, uma rede criminosa transnacional desenvolve a capacidade de *licitamente* gerar suas próprias matérias-primas, produzindo, transportando e distribuindo os bens ou serviços que posteriormente serão traficados, bem como controlando seu comércio atacadista ou varejista – estão sempre relacionados à corrupção política no financiamento de campanhas eleitorais e em contratações públicas, nos países em que falhas estatais mais agudas impedem o desmantelamento legal e judicial de redes criminosas por meio do confisco de ativos. Nesse contexto, esta análise amplia conclusões anteriores, fornecendo bases conceituais e empíricas para explicar a maior diversificação dos crimes econômicos organizados e sua relação com um maior grau de integração vertical em negócios jurídicos politicamente resguardados por financiamentos ilícitos de campanhas eleitorais e envolvimentos ilegais em licitações de contratos públicos. Com base nas estruturas teóricas de Williamson, observa-se que a integração vertical das atividades econômicas pelas organizações criminosas tem por objetivo reduzir os custos de transação ligados à frequência, especificidade, incerteza, racionalidade limitada e comportamento oportunista nas transações de mercado em ambientes econômicos, nos quais outras organizações criminosas também competem com violência e corrupção para conquistar mercados lícitos e apoiar atividades criminosas das mais variadas naturezas. Além disso, os conceitos e dados empíricos ora apresentados demonstrarão que uma maior integração vertical das atividades econômicas de uma rede criminosa em um ambiente em que existem falhas estatais na prestação de serviços públicos (tais como a garantia de transparência e higidez nas eleições políticas e na tomada de decisões judiciais) também será acompanhada do maior

fornecimento pelo crime organizado de bens e serviços quase-públicos (como, por exemplo, mecanismos alternativos de resolução de conflitos), voltados a atender aos segmentos economicamente mais vulneráveis da população, localizados nas áreas geográficas de atuação de tais organizações criminosas. Nesse cenário, a violação sistemática dos direitos políticos e civis, tais como a violação do direito humano de acesso à justiça ou à forma transparente e hígida de eleger mandatários de cargos públicos, funciona como um pré-requisito para o fortalecimento social do crime organizado. Em suma, há uma reação em cadeia em que as falhas do sistema judicial incentivam recursos mais frequentes a *mecanismos alternativos de resolução de conflitos* fornecidos pelo crime organizado e por grupos armados, os quais por sua vez estão ligados a uma maior diversificação de mercados ilícitos e a uma maior integração vertical a mercados lícitos que sustentam tais mercados ilícitos. Uma das principais conclusões deste trabalho é que uma atuação judicial mais eficiente no confisco de ativos provenientes de crimes reforça o direito humano de acesso à justiça para os segmentos mais vulneráveis da população, além de impactar positivamente o direito de eleger, com menor interferência do crime organizado, mandatários de cargos públicos. Por conseguinte, uma atuação judicial mais eficiente no desmantelamento de redes criminosas não só reforçará a dissuasão/punição dessas organizações, como também evitará o crescimento de bolhas de proteção sociopolítica, nas quais o crime organizado prospera.

**PALAVRAS-CHAVE:** Crime Organizado; Corrupção Política; Confisco de Bens; Sistemas Judiciais; Métodos Alternativos de Resolução de Disputas (ARD).

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## I. BACKGROUND AND INTRODUCTION

Basic political governance, in general, and reductions in the levels of physical and other types of collective violence, in particular, require effective preventive and enforcement mechanisms to be provided by public sector institutions and organised social networks alike. For the rule of law to have any meaning, these mechanisms should be unbiased in their social accessibility in order to redress grievances with procedural safeguards, thus ensuring the exercise of the most basic political, civil, social, cultural and economic human rights instilled in nine United Nations Human Rights Conventions and Protocols legally ratified worldwide.<sup>1</sup> In this context, Buscaglia has shown that a comprehensive and effective human security regime requires the predictable, consistent, and coherent practical enforcement of all basic political, civil, and economic human rights *in action* (and not just the theoretical existence of human rights *in the books*).<sup>2</sup> The legal and judicial mechanisms sustaining the exercise of human rights *in action* serve in turn as foundations for human security as well as for economic development.<sup>3</sup> Within these frameworks, improvements in the delineation and enforcement of collective, communal and private property rights are key conditions for economic progress within free and open societies.<sup>4</sup>

Buscaglia and Buscaglia & Stephan have shown why the supply and demand of formal judicial sector-based dispute resolution mechanisms

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<sup>1</sup> Available at:

<<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>>.

Accessed at: February 23, 2018. See BUSCAGLIA, Edgardo. Legal and Economic Development: The Missing Links. **Journal of Interamerican Studies and World Affairs**, Vol. 35, 4, 1994; and BUSCAGLIA, Edgardo. Introduction to law and economics of development. In: Edgardo Buscaglia; William Ratliff; Robert Cooter (eds.). **The Law and Economics of Development**. Greenwich, CT: JAI Press, 1997.

<sup>2</sup> See BUSCAGLIA, Edgardo. Institutional Factors Determining the Gap between Laws in the Books versus Laws in Action: An Analytical Framework for Improving Judicial Effectiveness. In: David Linnan (ed.). **Legitimacy, Legal Development and Change: Law and Modernization Reconsidered**. London: Routledge, 2016.

<sup>3</sup> See ACEMOGLU, Daron; ROBINSON, James A. **Why Nations Fail: the origins of power, prosperity, and poverty**. New York, NY: Crown Publishers, 2012; and HAYEK, Friedrich. **Law, Legislation and Liberty, Vol. 1: Rules and Order**. Chicago, IL: Chicago University Press, 1973.

<sup>4</sup> See BUSCAGLIA, Edgardo. Legal and Economic Development: The Missing Links. **Journal of Interamerican Studies and World Affairs**, Vol. 35, 4, 1994; BUSCAGLIA, Edgardo. An analysis of judicial corruption and its causes: an objective governing-

and of informal alternative dispute resolution mechanisms (ADRMs) occur within rural environments in 16 countries.<sup>5</sup> The analysis provided below will shed an extended light on the economic and judicial factors leading to the supply and demand of *alternative dispute resolution mechanism* (ADRMs) offered by transnational organised criminal groups seeking a vertical integration within legal economies for the purpose of supporting their increasingly diverse criminal markets in specific regions of specific countries within which state failures occur.

The vertical legal economic integration of criminal enterprises occurs when a transnational criminal network partially or completely acquires the legal business capacity to generate its own raw materials for the production of an illegal good or service, produces the final good or service to be trafficked, transports this good or service to be trafficked, distribute the good or service while controlling the wholesale and retail domains of their businesses.

Past international comparative empirical research in Buscaglia (2011) has shown that high-level political corruption always derives from all types of organised criminal networks composed of public officials and/or private non-state actors dedicated to all types of economic complex crimes, mainly human trafficking, drugs trafficking, arms trafficking, counterfeiting, smuggling, extortions, fraud, illicit enrichment, illegal campaign financing schemes and corruption in public procurement such as price fixing and bid rigging with money laundering, among many others.<sup>6</sup>

The analysis advanced in this study will show that greater degrees of vertical integration of criminal enterprises within the legal economy

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based approach. **International Review of Law and Economics**, Vol. 21, 2, 2001; and HAYEK, Friedrich. **Law, Legislation and Liberty, Vol. 1: Rules and Order**. Chicago, IL: Chicago University Press, 1973.

<sup>5</sup> See BUSCAGLIA Edgardo. Investigating the links between Access to Justice and Governance Factors: An objective indicators' approach. **Global Programme against Corruption Research and Scientific Series (United Nations Center for International Crime Prevention)**, No. CICP-13, 2001; and BUSCAGLIA, Edgardo; STEPHAN, Paul. An Empirical Assessment of the Impact of Formal versus Informal Dispute Resolution on Poverty: a Governance-Based Approach. **International Review of Law & Economics**, Vol. 25, 1, 2005.

<sup>6</sup> See BUSCAGLIA, Edgardo. On best and not so good practices for addressing high-level political corruption worldwide: an empirical assessment. In: Susan Rose-Ackerman; Tina Søreide (eds.). **International Handbook on the Economics of Corruption, Volume Two**. Northampton, MA: Edward Elgar Publishing, 2011.

comes hand in hand with political protection mainly through illegal electoral political campaign financing and illegal public procurement contracts in countries suffering from acute state failures to dismantle organised crime networks through civil and criminal asset forfeitures. At the same time, state institutional *vacuums* incentivise social segments of the population to demand social services provided by these same criminal networks enjoying social protection rackets.<sup>7</sup>

In theory, institutions responsible for the interpretation and application of laws must be able to address the necessary civil and criminal asset forfeitures to be enforced upon transnational criminal enterprises within the framework of the United Nations Convention against Transnational Organised Crime and the United Nations Convention against Corruption.<sup>8</sup> But in practice, when executive and judicial institutions *fail* to perform by not engaging in criminal assets forfeitures<sup>9</sup> (either because of technical deficiencies, or because of political corruption or because of dysfunctional procedures causing high transaction costs blocking access to justice) it follows that the hierarchical structure of criminal enterprises react accordingly by becoming larger, more publicly notorious while aiming at the vertical and horizontal integrations of their empire, thus minimising the costs of future illegal markets transactions vis a vis internal organisational transactions. The seminal theoretical work by Williamson provides the basis for this derived conclusion.<sup>10</sup>

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<sup>7</sup> High level corruption is defined as the use of public office for private benefit of political appointees and all types of top elected officials. The analysis of high-level corruption is addressed in BUSCAGLIA, Edgardo. On best and not so good practices for addressing high-level political corruption worldwide: an empirical assessment. In: Susan Rose-Ackerman; Tina Søreide (eds.). **International Handbook on the Economics of Corruption, Volume Two.** Northampton, MA: Edward Elgar Publishing, 2011.

<sup>8</sup> See BUSCAGLIA, Edgardo. On best and not so good practices for addressing high-level political corruption worldwide: an empirical assessment. In: Susan Rose-Ackerman; Tina Søreide (eds.). **International Handbook on the Economics of Corruption, Volume Two.** Northampton, MA: Edward Elgar Publishing, 2011.

<sup>9</sup> The term "state failure" will be used here as the systematic incapacity and/or unwillingness of a State to supply judicial outputs in terms of judicial resolutions, such as court rulings on asset forfeitures.

<sup>10</sup> See WILLIAMSON, Oliver. The Economics of Organization: The Transaction Cost Approach. **The American Journal of Sociology**, Vol. 87, 3, 1981; and WILLIAMSON, Oliver. Transaction Costs Economics: An Introduction. **Economics Discussion Papers**, No. 2007-3, 2007. Available at: <<http://www.economics>>

The role of informality in the provision of alternative dispute resolution mechanisms (hereafter abbreviated *ADRsMs*) assessed here follows previous foundational research by Buscaglia, Buscaglia & Ratliff and Buscaglia & van Dijk.<sup>11</sup> By extending previous analysis, two kinds of ADRMs are considered in this study: One is a mediation/arbitration combo orchestrated by organised criminal networks filling judicial vacuums in the state supply of court services within social environments deeply culturally engrained by organised criminal groups supplying all kinds of *protection* rackets to social groups in the midst of State vacuums. Buscaglia shows that, typically, parties with access to ADRMs supplied by informal networks in Colombia or in Congo are given the chance to reach a settlement by themselves, mediated by a representative of the organised crime group.<sup>12</sup> If a settlement is not reached, the mediator will

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[ejournal.org/economics/discussionpapers/2007-3/at\\_download/file](http://ejournal.org/economics/discussionpapers/2007-3/at_download/file). Accessed at:  
February 23, 2018.

<sup>11</sup> See BUSCAGLIA, Edgardo. Legal and Economic Development: The Missing Links. **Journal of Interamerican Studies and World Affairs**, Vol. 35, 4, 1994; BUSCAGLIA, Edgardo. Introduction to law and economics of development. In: Edgardo Buscaglia; William Ratliff; Robert Cooter (eds.). **The Law and Economics of Development**. Greenwich, CT: JAI Press, 1997; BUSCAGLIA, Edgardo. An analysis of judicial corruption and its causes: an objective governing-based approach. **International Review of Law and Economics**, Vol. 21, 2, 2001; BUSCAGLIA Edgardo. Investigating the links between Access to Justice and Governance Factors: An objective indicators' approach. **Global Programme against Corruption Research and Scientific Series (United Nations Center for International Crime Prevention)**, No. CICP-13, 2001; BUSCAGLIA, Edgardo. On best and not so good practices for addressing high-level political corruption worldwide: an empirical assessment. In: Susan Rose-Ackerman; Tina Søreide (eds.). **International Handbook on the Economics of Corruption, Volume Two**. Northampton, MA: Edward Elgar Publishing, 2011; BUSCAGLIA, Edgardo. **Vacíos de Poder en Mexico**. Ciudad de México, DF: Random House Mondadori, 2013; BUSCAGLIA, Edgardo. Dispute resolution mechanisms provided by violent non-state actors: An international comparative analysis of causes and consequences. In: Stefano Ruzza; Anja Jakobi; Charles Geisler (eds.). **Non-State Challenges in a Re-Ordered World: The Jackals of Westphalia**. London: Routledge, 2015; BUSCAGLIA, Edgardo; RATLIFF, William. **War and Lack of Governance in Colombia: Narcos, Guerrillas and U.S. Policy**. Stanford, CA: Hoover Institution Press, 2001; and BUSCAGLIA, Edgardo; VAN DIJK, Jan. Controlling Organized Crime and Corruption in the Public Sector. **Forum on Crime and Society**, Vol. 3, 1-2, 2003.

<sup>12</sup> See BUSCAGLIA, Edgardo. Dispute resolution mechanisms provided by violent non-state actors: An international comparative analysis of causes and consequences.

generate an arbitration award by imposing a resolution backed by social enforcement and organised violence if needed. The second most typical ADRMs are the traditional dispute resolution mechanism composed of elders (e.g. *Jirgas* in Afghanistan).

Buscaglia shows that ADRMs imperfectly substitute for state-led adjudication and, in order to be able to operate sustainably, these ADRMs must establish or retain legitimacy in the eyes of the most economically marginalised segments of the populations they serve.<sup>13</sup> Buscaglia further demonstrates that within these same kinds of institutional and social environments characterised by state-judicial failures to ensure the human right to access court services, there is also a lack of judicial resolutions addressing property-related disputes.<sup>14</sup> In short, past research demonstrated that regions of countries where there is a weak exercise of the human right to access formal court services will also show a greater demand for ADRMs supplied by socially legitimate informal bodies. In order to expand this past research, one could now hypothesise that based on worldwide empirical observations, organised crime networks will also be involved in more frequently supplying ADRMs as a *quid pro quo* for social protection. Based on empirical data in Buscaglia, one could also explain why the vertical integration of these organised crime networks supplying ADRMs is so frequently supported by the supply of economic inputs, such as labor and land, coming from the users of these same ADRMs.<sup>15</sup>

Some socially-legitimate, informal mechanisms are not really *systems*, but rather a range of diverse frameworks based upon the principle of restorative justice and aimed at compensating and redressing private grievances. The goal is to restore the victimised community or the

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In: Stefano Ruzza; Anja Jakobi; Charles Geisler (eds.). **Non-State Challenges in a Re-Ordered World: The Jackals of Westphalia**. London: Routledge, 2015.

<sup>13</sup> See BUSCAGLIA Edgardo. Investigating the links between Access to Justice and Governance Factors: An objective indicators' approach. **Global Programme against Corruption Research and Scientific Series (United Nations Center for International Crime Prevention)**, No. CICP-13, 2001.

<sup>14</sup> See BUSCAGLIA, Edgardo. Dispute resolution mechanisms provided by violent non-state actors: An international comparative analysis of causes and consequences.

In: Stefano Ruzza; Anja Jakobi; Charles Geisler (eds.). **Non-State Challenges in a Re-Ordered World: The Jackals of Westphalia**. London: Routledge, 2015.

<sup>15</sup> See BUSCAGLIA, Edgardo. Dispute resolution mechanisms provided by violent non-state actors: An international comparative analysis of causes and consequences.

In: Stefano Ruzza; Anja Jakobi; Charles Geisler (eds.). **Non-State Challenges in a Re-Ordered World: The Jackals of Westphalia**. London: Routledge, 2015.

individual to their equivalent position before the grievance, while also addressing and neutralising the cause of the grievance itself. This restorative principle stands in sharp contrast to the usual retributive justice that focuses on punishing the author of a grievances to compensate society.<sup>16</sup>

In contrast, decisions in ADRMs provided by non-state violent actors are often made by one or several individuals within armed groups providing a dispute resolution racket-related *service*. Their rulings are reached regardless of victim consent and in all cases without best practice procedural safeguards (due process) in line with United Nations human rights conventions.<sup>17</sup> The dispute content may span political, economic, social, religious, or criminal issues. A large proportion of the cases addressed by these mechanisms represent commercial and contract disagreements, land and inheritance claims, or criminal cases of theft, rapes, vandalism, or even homicides.<sup>18</sup> These informal *rulings* usually represent the main or only escape valve for resolving disputes among the least wealthy segments of the population in urban slums and rural jurisdictions.<sup>19</sup> These rulings are sometimes accepted by the community involved, but not always.

On the other hand, informal dispute resolution mechanisms may co-exist with judges, prosecutors, police, or governors who channel complex cases to the informal channels in order to ease their caseloads or simply

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<sup>16</sup> See PEDROSO, João; TRINCÃO, Catarina. The (Re)birth of the Justice of the Peace: Democratic or Technocratic Justice Reform? The Experiences of Italy, Spain, Brazil and Portugal. **Beyond Law**, Vol. 19, 27, 2004.

<sup>17</sup> These conventions include the UN Charter, the 2 International Covenant on Political, Civil, Economic, Social and Cultural Rights and all other fourteen legal instruments instilling a large variety of human rights. Refer to United Nations Human Rights Conventions at:

<<http://www.ohchr.org/en/professionalinterest/Pages/InternationalLaw.aspx>>.

Accessed at: February 23, 2018.

<sup>18</sup> WOJKOWSKA, Ewa. **Doing justice: How Informal Justice Systems can contribute.** New York, NY: United Nations Development Programme, 2006.

<sup>19</sup> See JACOBY, Sidney. Access to Justice. *The American Journal of Comparative Law*, Vol. 29, 3, 1981. Resenha de: CAPPELLETTI, Mauro; GARTH, Bryant; WEISNER, John; KOCH, Klaus-Friedrich. **Access to Justice**. Milan: Giuffrè, 1979; and BUSCAGLIA, Edgardo. An analysis of judicial corruption and its causes: an objective governing-based approach. **International Review of Law and Economics**, Vol. 21, 2, 2001.

to avoid social disapproval of their *bad rulings*.<sup>20</sup> In this scenario, one may think of informal dispute resolution mechanisms – when covering state vacuums and thus imperfectly substituting for formal judicial proceedings – as a delaying mechanism for true judicial reform. In other words, when informal dispute resolution mechanisms substitute for the state judiciary, however imperfectly, one pernicious effect will be the inertia in much-needed institutional reforms.

Because the most socially, economically and/or ethnically vulnerable segments of the population are marginalised in the formal justice system and lack access to court-provided mediation and arbitration mechanisms, they show greater demand for informal non-state actors.<sup>21</sup> Within these deprived segments of the populations facing dysfunctional judicial contexts and lacking in public trust, there are many accounts of organised rackets providing alternative dispute resolution mechanisms (ADRs) to those sponsored by the state.<sup>22</sup> These findings on demand for alternative

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<sup>20</sup> See BIROL, Aline Pedra Jorge; DAL RI, JR., Arno. The Role of Organized Crime in Informal Justice Systems. *Uluslararası Güvenlik ve Terörizm Dergisi*, Vol. 2, 1, 2011; and SUNG, Hung-En. State Failure, Economic Failure, and Predatory Organized Crime: A Comparative Analysis. *Journal of Research in Crime and Delinquency*, Vol. 41, 2, 2004.

<sup>21</sup> See SANTOS, Boaventura de Souza. The Law of the Oppressed: the Construction and Reproduction of Legality in Pasárgada. *Law & Society Review*, Vol. 12, 1, 1977; BUSCAGLIA, Edgardo. An analysis of judicial corruption and its causes: an objective governing-based approach. *International Review of Law and Economics*, Vol. 21, 2, 2001; SUNG, Hung-En. State Failure, Economic Failure, and Predatory Organized Crime: A Comparative Analysis. *Journal of Research in Crime and Delinquency*, Vol. 41, 2, 2004; BIROL, Aline Pedra Jorge; DAL RI, JR., Arno. The Role of Organized Crime in Informal Justice Systems. *Uluslararası Güvenlik ve Terörizm Dergisi*, Vol. 2, 1, 2011; and JAMIESON, Neil, MOI, Stephen, & CHEROT, Jason. Acting outside the box: The emerging dispute resolution centres developing innovative ways to attract business. *Legal Week*, 07 jun. 2012. Available at: <http://www.legalweek.com/sites/legalweek/2012/06/07/acting-outside-the-box-the-emerging-dispute-resolution-centres-developing-innovative-ways-to-attract-business/>. Accessed at: February 23, 2018.

<sup>22</sup> See BIROL, Aline Pedra Jorge; DAL RI, JR., Arno. The Role of Organized Crime in Informal Justice Systems. *Uluslararası Güvenlik ve Terörizm Dergisi*, Vol. 2, 1, 2011; PEDROSO, João; TRINCÃO, Catarina. The (Re)birth of the Justice of the Peace: Democratic or Technocratic Justice Reform? The Experiences of Italy, Spain, Brazil and Portugal. *Beyond Law*, Vol. 19, 27, 2004; SANTOS, Boaventura de Souza. The Law of the Oppressed: the Construction and Reproduction of Legality in Pasárgada. *Law &*

dispute resolution far removed from the state domain can be framed in part within the research on game theory on trust and signalling advanced by Gambetta.<sup>23</sup>

Prior research related to this analysis presented here advanced the premise that there are high transaction costs for seekers of dispute resolution in States with weak governance suffering from high levels of political corruption (generating undue pressures on the court system for private benefit) and suffering from procedural complexities.<sup>24</sup> This may explain why informal alternative dispute resolution mechanisms are sought after by those segments of the population with low purchasing capacity and by those segments of businesses who are willing to pay dearly for private arbitration in highly sophisticated technological markets. Furthermore, high demand for alternative private dispute resolution mechanisms is prevalent among seekers of conflict resolution in environments where the states exhibit institutional vacuums. In other words, high transaction costs of solving disputes emerge in countries due to the institutional vacuums (i.e. absence of needed institutions) or corruption-linked failures of judicial institutions. Another predictor of such demand is the high incidence of private dispute resolution mechanisms. These are desirable solutions when, for example, technically complex commercial case-types do not have public and collective rights at stake and when the public good component of an arbitration resolution is nil. Samples from 16 countries found that in disputes involving criminal behaviour or fundamental civil, political, economic, social and cultural rights (i.e. where individuals seek resolutions with a strong “public good” human right component), seekers of dispute resolution consider informal mechanisms as a third option after direct formal state-

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Society Review, Vol. 12, 1, 1977; SCHÄRF, Wilfried. Non-State Justice Systems in Southern Africa: How Should Governments Respond? In: Workshop on Working with Non-State Justice Systems. Paper. London: University of Birmingham, 2003. Available at: <<http://www.gsdrc.org/docs/open/DS35.pdf>>. Accessed at: February 23, 2018; and WOJKOWSKA, Ewa. **Doing justice: How Informal Justice Systems can contribute.** New York, NY: United Nations Development Programme, 2006.

<sup>23</sup> GAMBETTA, Diego. **The Sicilian Mafia: The Business of Private Protection.** Cambridge, MA: Harvard University Press, 1993.

<sup>24</sup> See BUSAGLIA, Edgardo. **Judicial Corruption in Developing Countries: Its Causes and Economic Consequences.** Stanford, CA: Hoover Institution Press, 1999; and BUSAGLIA, Edgardo; STEPHAN, Paul. An Empirical Assessment of the Impact of Formal versus Informal Dispute Resolution on Poverty: a Governance-Based Approach. **International Review of Law & Economics**, Vol. 25, 1, 2005.

sponsored mediation (first best) and official court rulings (as a second best).<sup>25</sup> At the same time, they seek the power of the state to solve property rights disputes where possible, thereby counting on the official archives of court rulings to enforce rights by using the state enforcement powers as a hedge in case future related disputes arise. In other words, the consequences emerging from informal dispute resolutions may only provide a socially-accepted legal redress in limited cases within which a non-state dispute resolution provider operates and possess social legitimacy.

As a result of the above, this study seeks to explain the cost benefit analysis behind greater or lesser frequencies of informal dispute resolution provided by non-state armed groups in environments where the human right to access the official courts is hampered or absent in practice. Non-state armed groups providing ADRMs would expect a quid pro quo or, in other words, in exchange for their "ADRM services" communities will be forced to provide property and/or labor to the non state armed network supplying dispute resolution mechanisms. This user support may include human resources, logistic infrastructure, and social protection against rival groups (sometimes the state) as *quid pro quo*.<sup>26</sup>

Much literature has been aimed at assessing the access to dispute resolution mechanisms involving public and informal mechanisms offered by non-state actors. In contrast to former initiatives, however, this study evaluates access to public and private dispute resolution mechanisms in environments where organised crime networks prevail and seek economic support for their expansion within the legal and illegal domains. Based on previous accounts of organised crime in providing *social goods* and services to vulnerable communities<sup>27</sup>, this study provides a conceptual interpretation of how criminal associations expand their dispute resolution *services* and points to the paradox of weak states relying on non-state dispute management to the point of shirking much

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<sup>25</sup> See BUSCAGLIA, Edgardo; STEPHAN, Paul. An Empirical Assessment of the Impact of Formal versus Informal Dispute Resolution on Poverty: a Governance-Based Approach. **International Review of Law & Economics**, Vol. 25, 1, 2005.

<sup>26</sup> See BUSCAGLIA Edgardo. Investigating the links between Access to Justice and Governance Factors: An objective indicators' approach. **Global Programme against Corruption Research and Scientific Series (United Nations Center for International Crime Prevention)**, No. CICP-13, 2001; and BUSCAGLIA, Edgardo. **Vacíos de Poder en Mexico**. Ciudad de México, DF: Random House Mondadori, 2013.

<sup>27</sup> See MILHAUPT, Curtis; WEST, Mark. The Dark Side of Private Ordering: An Institutional and Empirical Analysis of Organized Crime. **University of Chicago Law Review**, Vol. 67, 1, 2000.

needed judicial reforms. Consequently, this study will provide objective non perceptual data showing the association between three variables:

- (1) the collapse of judicial system performance in supplying dispute resolution to vulnerable segments of the population and in supplying court resolutions addressing criminal assets forfeitures;
- (2) the consequent increased in social demand for alternative dispute resolution mechanisms (hereafter, ADRMs) provided by armed organised crime networks; and
- (3) the consequent increased vertical integration of these same organised crime networks in the legal domains to support the greater diversification in criminal markets (i.e. drugs production, arms trafficking, trafficking of human beings, counterfeiting etc) all accompanied by corruption in electoral campaign financing and public procurement as channels of political protection.

These three sets of data linkages will be tested through a hypothesis stating that improvements in judicial performance linked to enhanced access to courts in regions where criminal networks supply ADRMs combined with more frequent judicially-mandated asset forfeitures against these same criminal networks will reduce the scale and scope of organised crime in terms of decreases in their vertical integration within the legal economy and reduced political corruption within the electoral and public procurement domains. In Buscaglia these 2 domains are empirically the most frequent types of political corruption worldwide.<sup>28</sup> If this hypothesis were verified, then one could derive that improvements in the exercise of the human rights to access justice through criminal court domains coupled with more frequent criminal asset forfeitures will have a direct impact in reducing the scale and scope of organised crime and of political corruption.

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<sup>28</sup> See BUSCAGLIA, Edgardo. On best and not so good practices for addressing high-level political corruption worldwide: an empirical assessment. In: Susan Rose-Ackerman; Tina Søreide (eds.). **International Handbook on the Economics of Corruption, Volume Two**. Northampton, MA: Edward Elgar Publishing, 2011.

## II. INTERNATIONAL COMPARATIVE JURIMETRIC ANALYSIS OF THE ALLOCATIVE EFFICIENCY OF JUDICIAL SYSTEMS

Many judiciaries around the world suffer from a chronic lack of quality, transparency and impartiality in their rulings due to endemic high-level political corruption placing undue pressures on the court system combined with lack of institutional technical capacities.<sup>29</sup> The basic elements of an effective judicial system may be missing, among them: predictable procedures and outcomes; accessibility by all segments of population, regardless of income and educational level, in order to comply with human rights rules and standards; sustainable backlogs with reasonable time to disposition; and adequate court-provided remedies. In cases when all or some of these 4 elements are absent, confidence in the administration of justice is lacking, especially among small economic private firms and low-income individuals.<sup>30</sup> As a result, low-income segments of the population engaged in a dispute tend to seek other settlement mechanisms, go without it, or simply resort to "private justice"- sometimes through the use of violence in its many forms, such as community lynchings. In this context, informal mediation or arbitration systems may provide an efficient safety valve with advantages for certain types of dispute. Yet in many other case-types of altercations involving the violation of fundamental cultural, social, political and civil rights, access to justice and remedies may go unaddressed in countries with fledgling court systems. These deficits in the provision of dispute resolution mechanisms undermine the legitimacy of the state and disproportionately burden the poorest segments of the population.<sup>31</sup>

In order to address these failures on a comparative international jurimetric basis, one needs objective jurimetric data and not just surveys

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<sup>29</sup> See BUSCAGLIA, Edgardo. **Judicial Corruption in Developing Countries: Its Causes and Economic Consequences**. Stanford, CA: Hoover Institution Press, 1999.

<sup>30</sup> See BUSCAGLIA, Edgardo. An analysis of judicial corruption and its causes: an objective governing-based approach. **International Review of Law and Economics**, Vol. 21, 2, 2001; and BUSCAGLIA Edgardo. Investigating the links between Access to Justice and Governance Factors: An objective indicators' approach. **Global Programme against Corruption Research and Scientific Series (United Nations Center for International Crime Prevention)**, No. CICP-13, 2001.

<sup>31</sup> See BUSCAGLIA Edgardo. Investigating the links between Access to Justice and Governance Factors: An objective indicators' approach. **Global Programme against Corruption Research and Scientific Series (United Nations Center for International Crime Prevention)**, No. CICP-13, 2001.

of court users' perceptions. To meet this need, the descriptive data found on Table 1 below provides jurimetric evidence of increased or decreased efficiency in the allocation of budget resources for the supply of court services addressing a representative sample of resolutions involving private property disputes and organised crime case-files within 1 specific region per country in 20 countries where these same indicted organised crime groups supply dispute resolution mechanisms during the period 2004-2014.

The efficiency in budget allocation is addressed through input/output relationships. Judicial input indicators are measured in Table 1 through the ten-year average of time series measuring the annual percentage changes in budget allocations to physical court infrastructure, judicial training, technology and salaries with benefits. While output indicators are provided in the last two columns measuring a time series of ten-year average percentage changes in the clearance rates, understood as annual percentage changes in the number of organised crime case files showing illicit political campaign financing and/or corruption in public procurement that are annually disposed of as a proportion of pending cases. The political corruption linked to public procurement involves sampled cases of bid-rigging, price-fixing and collusion involving public infrastructure and equipment contracts. The last column measures the ten year average percentage changes in the frequencies of judicial violations of the procedural and substantive criminal codes found through the technical review of an annual sample of organised crime case files involving illicit political campaign financing and/or corruption in public procurement in each of the regions of 20 countries where ADRMs were supplied by these same organised crime networks to marginalised segments of the populations. A judiciary will be classified as efficient to the extent that average annual percentage increases in budget allocations are associated with a more than proportional annual average percentage increases in clearance rates and more than proportional increases in the quality of judicial resolutions (i.e. annual percentage decreases in judicial errors). Therefore, in our jurimetric description and analysis found in Table 1 we measure quantity and quality of judicial supply of services.

One can see in Table 1 below that Argentina has experienced a ten-year average of a 6 percent increase in budgetary allocations devoted to infrastructure and a ten-year average 3 percent increase in its budget devoted to court technology while its budget lines devoted to judicial training of personnel have decreased by 2 percent on a ten year average basis while the salary ten-year average increase is 67 percent. At the same time, Argentina's clearance rates have experienced a ten-year average 18 percent decrease (i.e. case dispositions as a proportion of cases pending

addressing criminal asset forfeitures has decreased by 18 percent on a ten-year average basis with a consequent increase in backlogs and time delays) and the errors found in judicial rulings addressing criminal asset forfeitures has increased by 23% between 2004 and 2014 (in other words, on average, judges and prosecutors addressing criminal asset forfeitures of organised crime have made 23 percent more procedural and substantive errors in 2014 compared to 2004, thus reducing the quality of judicial resolutions). This simply means that despite of its percentage increases in budget resources devoted to judicial salaries and technology, Argentina's judicial sector is clearing less organised crime cases from its dockets (as a proportion of pending cases) and it is experiencing less quality in its rulings addressing asset forfeitures of criminal networks. Therefore, Argentina can be classified as inefficient in terms of its judicial performance.

The same pattern of inefficiency can be observed in the rest of the sampled countries included in Table 1 below, except for the cases of in Chile, Colombia and to a lesser extent of efficiency in Botswana and Uruguay. More specifically, Chile, and Colombia experienced significant percentage increases in budget resources (as part of their judicial reforms to install a procedural oral legal system) and these increases in budget lines were allocated to court technologies, to training of judicial personnel, to infrastructure and to a lesser extent salaries. On the judicial output domain of Chile and Colombia, the ratio of disposed to pending cases (i.e. clearance rates) in Chile increased by 132 percent and the proportion of sampled rulings with significant errors decreased by 58 percent in Chile while in Colombia the ratio of disposed to pending cases increased by 97 percent (in great part through the use of alternative dispute resolution mechanisms) and the proportion of sampled rulings with significant errors (i.e. judicial quality) decreased by 27 percent (i.e. an average of 27 percent less judicial errors in 2014 compared to 2004), thus giving Colombia a significant improvement in its quality of court rulings. Therefore, Chile and Colombia are the only two countries in our sample that show the strongest judicial efficiency when taking into account judicial quantity (percentage increase in clearance rates) and judicial quality (percentage increase in the proportion of sampled case files without significant errors that would have altered the course of the rulings in organised crime asset forfeitures). Furthermore, Botswana and Uruguay both show indicators of efficiency. The rest of the countries show inefficiencies linked to increases of budget allocations coming hand in hand with decreasing quantities of cases disposed coupled with decreasing quality of court rulings. Finally, one needs to take into account that -by definition- a decrease in the frequencies of judicial errors in asset forfeitures proceedings will hamper organised crime's abilities to achieve

vertical integration of its legal businesses. This link between vertical integration of criminal networks within the legal economy and judicial efficiency in confiscating criminal assets will be explored and tested below.

In short, the jurimetric analysis in Table 1 below indicates positive associations between percentage changes in budget allocations to technology, infrastructure, training and salaries on the one hand and percentage changes in output indicators addressing the quantity and the quality of judicial resolutions on the other. In this context, the only judicial systems showing “efficient” improvements in the quality of judicially-driven asset forfeitures are Botswana with an 8% decrease in judicial errors found through the examination of organised crime case-files, Chile with a 58% decrease in judicial errors, Colombia with a 27% decrease in judicial errors in the same case types involving asset forfeitures and finally Uruguay with a 12% decrease in errors. In these same four countries one observes from Table 1 that they are also experiencing increases in clearance rates (i.e. organised crime cases involving asset forfeitures with political corruption in electoral campaign financing and public procurement are being disposed at a faster pace than pending cases. In short, these 4 countries exhibit judicial allocative efficiency by showing percentage increases in budget allocations linked to more than proportional increases in judicial outputs (i.e. in terms of annual percentage increases in clearance rates and of annual percentage increases in the quality of judicial resolutions).

One needs to take into account that in the last column measuring judicial quality in Table 1, our case-file review teams measured those court and prosecutorial errors in addressing the rights of victims of organised crime to access court proceedings, on the basis of international human rights conventions ratified by the 20 countries sampled here and on the basis of each country’s procedural and substantive laws. As a result, indicators of judicial errors measured in the last column of Table 1 below include abuses of judicial discretion involving violations of the human rights of victims of organised crime. For example, a report by the European Parliament (2012) shows that Italy (among other European member states) requires the court system to allocate compensations and all kinds of support to victims of organised crime by re-allocating resources from criminal asset forfeitures to civil society networks in charge of supporting victims of organised crime. In this regard, strengthening judicial efficiency entails the enhanced human rights of victims.

**Table 1 – Annual percentage changes in supply-related variables affecting quality and quantity of court services (2004-2014)<sup>32</sup>**

| Country   | Budget %<br>change capital<br>infrastructure | Budget %<br>change capital<br>training | Budget %<br>change capital<br>technology | Budget %<br>change salaries | Clearance %<br>change 2004-<br>2014 on<br>criminal and<br>civil<br>forfeitures<br>(2004-2014) | % Change in<br>Judicial<br>procedural &<br>substantive<br>errors in<br>rulings on<br>criminal and<br>civil<br>forfeitures<br>(2004-2014) |
|-----------|--|--|--|-----------------------------|---|--|
| Albania   | -3   | -15                                    | -1                                       | 83                          | -24   | 55   |
| Argentina | 6  | -2                                     | 3  | 67                          | -18   | 23   |
| Benin     | 4  | -12                                    | 2  | 12                          | -21   | 45   |
| Bolivia   | -15  | 2                                      | 11                                       | 45                          | -11   | 40   |
| Botswana  | 1  | 2                                      | 4  | 3                           | 7   | -8   |
| Chile     | 122  | 127                                    | 99                                       | 49                          | 132   | -58  |
| Colombia  | 73   | 43                                     | 73                                       | 34                          | 97  | -27  |
| Congo     | -5   | -12                                    | -14                                      | 3                           | -23   | 74   |
| Guatemala | 2  | -7                                     | 6  | 39                          | -69   | 26   |
| Honduras  | 4  | 11                                     | 61                                       | 7                           | -7  | 40   |
| Indonesia | 2  | 25                                     | 87                                       | 9                           | -2  | 4  |

<sup>32</sup> Statistics above are rounded up. All the indicators are primary data developed by the author and field teams in 20 countries based on average percentage changes in budget allocations (in real terms discounting for inflation at 1998 prices) and budgets exercised and approved by legislatures. Data on clearance rates are based on court-specific data extracted from judicial data base archives and quality of court rulings on criminal and civil forfeitures 2004–2014.

Regardless of the socio-legal traditions involved, a weak judiciary's inability to satisfy the imperative access to dispositions is one of the most challenging human right-related deficit of judicial reforms worldwide.<sup>33</sup> For example, in Mexico, for every 100 organised crimes committed, only one on average receives any kind of judicial disposition<sup>34</sup>, while in Afghanistan more than 90 per cent of civil and criminal cases are channelled to informal systems.<sup>35</sup> Moreover, in weak judicial systems, appointments and promotions are based on patronage linked to political corruption coupled with a lack of an effective model against which to assess the character and psychological suitability of applicants for the position of judge. This contributes to the poor performance of courts, as measured in Table 1 above, despite huge sums of money spent on higher salaries in most countries.<sup>36</sup> It could be argued that the supply of court services and the performance incentives faced by judges, court personnel, police and prosecutorial services very much depend on the controls in place to prevent political and judicial corruption. In the final analysis, the lack of higher-governance institutions (or sometimes even "state vacuums") in the form of the complete absence of judicial, administrative, economic controls and social audits to be applied to the political campaign financing and public procurement are at the heart of organised criminality and the lack of human development in too many countries. Poorly trained judges in an overburdened legal system are susceptible to corrupting influences by criminal associations of politicians and businesspeople, thus creating an environment where the rule of law cannot be guaranteed. For example, the use of *ex parte* communication (separate meetings between a powerful litigant and a judge without the other party present) is a standard practice in Afghanistan, Indonesia, Mexico, and Zimbabwe. It is an example of legal practice that pushes users out of the court system regardless of their desire or ability to bribe – and into the traditional or criminal dispute resolution domain. In

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<sup>33</sup> See BUSCAGLIA, Edgardo; DAKOLIAS, Maria; RATLIFF, William. **Judicial Reform in Latin America: a Framework for National Development**. Stanford, CA: Hoover Institution Press, 1995.

<sup>34</sup> See GONZÁLEZ RUIZ, Samuel; MENDIETA JIMÉNEZ, Ernesto; BUSCAGLIA, Edgardo; MORENO HERNANDEZ, Moisés. **El Sistema de Justicia Penal y su Reforma: Teoría y Práctica**. 2<sup>a</sup> ed. Ciudad de México: Fontamara, 2006.

<sup>35</sup> See COBURN, Noah; DEMPSEY, John. Informal dispute resolution in Afghanistan. **United States Institute of Peace**, Special Report No. 247, 2010.

<sup>36</sup> See BUSCAGLIA, Edgardo; DAKOLIAS, Maria; RATLIFF, William. **Judicial Reform in Latin America: a Framework for National Development**. Stanford, CA: Hoover Institution Press, 1995.

Afghanistan, Mexico and Paraguay there are cases decided in *ex parte* meetings where litigant lawyers bid before a judge or court clerks for the initial drafting of court rulings.<sup>37</sup> These factors also partially explain the poor performance in Table 1 above.

These problems add cost and risk to holding property rights among small size entrepreneurs or among household-based farming units. This in turn reduces the potential flows of investments towards land and human capital. At the same time, obstructed access to justice fosters reliance on non-state informal mechanisms frequently supplied by criminal associations to solve disputes through “popular justice” in exchange for allocating disputed land to drug cultivation. Or it results in the *quid pro quo* supply of labour to organised crime by young members of rural households, thus constituting a channel for capturing and controlling the social fabric by organised crime.<sup>38</sup>

Furthermore, when rural households do not trust that titling and other property rights delineation will be enforced through formal court or administrative channels, this limits the formalisation of titles in rural land registries, thus blocking formal credit and future investment flows into land and human capital.<sup>39</sup> In this respect, the empirical work advanced since the late 1980s provide ample support to the pernicious effect of public sectors imposing high transaction costs on individuals. In short, authors such as De Soto and North address how state procedural complexities and corruption add transaction costs to the tenure of formal property rights.<sup>40</sup> Yet, these same authors and others following the law

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<sup>37</sup> See BUSCAGLIA, Edgardo. **Judicial Corruption in Developing Countries: Its Causes and Economic Consequences**. Stanford, CA: Hoover Institution Press, 1999.

<sup>38</sup> For an account of this pernicious process in Colombia, see BUSCAGLIA, Edgardo; RATLIFF, William. **War and Lack of Governance in Colombia: Narcos, Guerrillas and U.S. Policy**. Stanford, CA: Hoover Institution Press, 2001; for Japan and Russia, see MILHAUPT, Curtis; WEST, Mark. **The Dark Side of Private Ordering: An Institutional and Empirical Analysis of Organized Crime**. *University of Chicago Law Review*, Vol. 67, 1, 2000.

<sup>39</sup> See DE SOTO, Hernando. **The Other Path: The Invisible Revolution in the Third World**. New York, NY: Harper & Row, 1989; DE SOTO, Hernando. **The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else**. New York, NY: Basic Books, 2000; and NORTH, Douglass. **Institutions, Institutional Change and Economic Performance**. Cambridge, MA: Cambridge University Press, 1990.

<sup>40</sup> See DE SOTO, Hernando. **The Other Path: The Invisible Revolution in the Third World**. New York, NY: Harper & Row, 1989; and NORTH, Douglass. **Institutions**,

and economics approach have not delved into what kind of desirable or undesirable informal dispute resolution may arise as a result, especially when these ADRMs are supplied by non-state armed criminal networks in the midst of “state vacuums”. This work advanced here fills such research lacuna.

### **III. A COMPARATIVE ANALYSIS OF JUDICIAL & SOCIAL FACTORS LINKED TO THE DEMAND FOR ADRMs**

Let's remind the reader that the analysis in this study aims at showing that the greater degrees of criminal networks' vertical integration of legal business activities (where, for example, a criminal network acquires 1- the legal economic capacity to generate its own raw materials such as coca paste; 2- produce the good or service to be trafficked, such as pure cocaine; 3- transport the good or service to be trafficked, such as ownership of ships; 4- control the distribution network of the good or service; 5- control the wholesale; and 6- control the retail legal businesses) will more frequently occur in countries with more acute state failures to legally and judicially address, through criminal asset forfeitures, the dismantling of organised crime linked to political corruption within the public procurement and electoral campaign financing domains. Please note that all twenty countries sampled for this study have signed and ratified the United Nations Convention against Organised Crime, its Protocols and the United Nations Convention against Corruption, all of which require the development of judicial asset forfeitures and asset recovery capacities. Therefore, our empirical analysis here also entails the evaluation of each country's compliance with its legal obligations instilled in ratified UN Conventions.<sup>41</sup>

In this context, the analysis in this piece extends previous findings by providing evidence that greater diversification of economic crimes committed by transnational networks with the protection of political high-level corruption will be supported by a more intense degree of vertical integration within legal markets linked to political corruption

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**Institutional Change and Economic Performance.** Cambridge, MA: Cambridge University Press, 1990.

<sup>41</sup> See Articles 2<sup>o</sup>, 6<sup>o</sup>, 12 and 13 of the United Nations Convention against Transnational Organised Crime. Available at:  
<http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Conventio n/TOCebook-e.pdf>. Accessed at: February 23, 2018.

and other types of criminal activities.

Building on Oliver Williamson's theoretical frameworks, the more diverse degree of integration of legal economic activities conducted by criminal enterprises is aimed at the criminal organisations' aim to reduce transaction costs linked to the frequency, specificity, uncertainty, bounded rationality, and opportunistic behaviour in market transactions within economic environments where other criminal organisations also compete for those same legal markets in order to support their expansion of their own criminal activities.<sup>42</sup>

In this scenario, Buscaglia showed that systemic violations of the human right to access justice by socially, economically or ethnically marginalised segments of the population translates into a more frequent provision of alternative dispute resolution mechanisms (ADRMs) by informal governance traditional structures, such as panels of notables or elderly.<sup>43</sup> In short, based on already referenced literature, one could hypothesise that specific judicial system failures foster more frequent provisions of "alternative dispute resolution mechanisms" ADRMs to be supplied by traditional frameworks but also to be supplied by organised crime groups seeking a greater diversification of their criminal markets and a greater vertical integration in legal markets to support their criminal activities.

In this context, one of the main implications of this piece is that a more effective judiciary that ensures the human right to access justice for the most vulnerable segments of the population combined with more effective judicial forfeiture of criminal assets linked to corruption in the political electoral campaign domain and public procurement will represent not just a way to enhance punitive/deterrence against criminal enterprises but also represents a policy to prevent social and political protection bubbles within which these same organised criminal

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<sup>42</sup> WILLIAMSON, Oliver. The Economics of Organization: The Transaction Cost Approach. **The American Journal of Sociology**, Vol. 87, 3, 1981; and WILLIAMSON, Oliver. Transaction Costs Economics: An Introduction. **Economics Discussion Papers**, No. 2007-3, 2007. Available at: <[http://www.economics-ejournal.org/economics/discussionpapers/2007-3/at\\_download/file](http://www.economics-ejournal.org/economics/discussionpapers/2007-3/at_download/file)>. Accessed at: February 23, 2018.

<sup>43</sup> BUSCAGLIA, Edgardo. An analysis of judicial corruption and its causes: an objective governing-based approach. **International Review of Law and Economics**, Vol. 21, 2, 2001; and BUSCAGLIA Edgardo. Investigating the links between Access to Justice and Governance Factors: An objective indicators' approach. **Global Programme against Corruption Research and Scientific Series (United Nations Center for International Crime Prevention)**, No. CICP-13, 2001.

enterprises thrive.

It seems natural to associate official power with dispute resolution capacities, but since the beginning of written history one can assess various forms of formal and informal dispute resolution mechanisms co-existing within a social realm. Examples are found in the dispute resolution mechanisms offered by trade fairs in medieval Europe<sup>44</sup> or, contemporarily, in the internal dispute resolution experiences of rural Afghanistan, Colombia, Congo, México, Nigeria, South Africa, and Southern Sudan.<sup>45</sup> For simpler interpersonal or intergroup conflicts, these non-state collective mechanisms frequently provide relatively effective dispute resolution (vis-à-vis politically and judicially corrupt official courts) in terms of social legitimacy and user perceptions of procedural transparency, enhanced efficiency, binding resolutions, higher quality of decisions, and lower administrative complexity than the State's judiciaries.<sup>46</sup>

Private sector innovation in national and transnational alternative dispute resolution mechanisms (ADRM)s generally occurs among multinational or large national corporations and relatively wealthy individuals.<sup>47</sup> Yet, among socially, economically and ethnically

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<sup>44</sup> BERNSTEIN, Lisa. Merchant Law in a Merchant Court: Rethinking the Code's Search for Immanent Business Norms. **University of Pennsylvania Law Review**, Vol. 144, 5, 1996; BUSCAGLIA, Edgardo; DAKOLIAS, Maria. Comparative International Study of Court Performance Indicators: A Descriptive and Analytical Account. **The World Bank (Legal and Judicial Reform Unit)**, Report No. 20.177, 1999; and GREIF, Avner; MILGROM, Paul; WEINGAST, Barry. Coordination, Commitment and Enforcement: The Case of the Merchant Guild. **Journal of Political Economy**, Vol. 102, 4, 1994.

<sup>45</sup> BUSCAGLIA, Edgardo. An analysis of judicial corruption and its causes: an objective governing-based approach. **International Review of Law and Economics**, Vol. 21, 2, 2001; and BUSCAGLIA Edgardo. Investigating the links between Access to Justice and Governance Factors: An objective indicators' approach. **Global Programme against Corruption Research and Scientific Series (United Nations Center for International Crime Prevention)**, No. CICP-13, 2001.

<sup>46</sup> BUSCAGLIA Edgardo. Investigating the links between Access to Justice and Governance Factors: An objective indicators' approach. **Global Programme against Corruption Research and Scientific Series (United Nations Center for International Crime Prevention)**, No. CICP-13, 2001.

<sup>47</sup> JAMIESON, Neil, MOI, Stephen, & CHEROT, Jason. Acting outside the box: The emerging dispute resolution centres developing innovative ways to attract business. **Legal Week**, 07 jun. 2012. Available at:

<<http://www.legalweek.com/sites/legalweek/2012/06/07/acting-outside-the-box-the->

marginalised individuals and communities with low purchasing power and in the midst of state vacuums and failures, one can find frequent arbitration, dispute boards, and private mediation services provided on the basis of the raw monopolistic power of non-state armed actors. This is the case, for instance, amongst Faryab's drug trafficking groups in northern Afghanistan; of the FARC and AUC Paramilitaries tribunals in the Pasto and Putumayo Departments of Colombia during the 90s until 2005; and the combination of arbitration and mediation provided by criminal networks within the *Mai-Mai* armed groups in Congo's Eastern region of South and North Kivu.<sup>48</sup>

Previous empirical research in Buscaglia examined the comparative advantages of informal land dispute resolution mechanisms in 16 countries.<sup>49</sup> Land disputes among low-income rural households were characterised by tenure on small plots of land. Most of these households lacked access to public services in general and lack of court services in particular.<sup>50</sup> Yet, a majority of households affirmed in household surveys that when faced with property-related conflicts linked to debts or inheritance, they sought informal dispute resolution through communal bodies or even through administrative public officials, such as mayors or governors, outside the court system. This empirical research applied to rural households in regions within which non-state armed actors offered ADMRs was based on two survey instruments aimed at assessing the legal and economic dimensions of social development linked to conflict resolution.<sup>51</sup> The first survey measured the frequencies of households

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[emerging-dispute-resolution-centres-developing-innovative-ways-to-attract-business/](#). Accessed at: February 23, 2018.

<sup>48</sup> ARIAS, Enrique Desmond; RODRIGUES, Corinne Davis. The Myth of Personal Security: Criminal Gangs, Dispute Resolution, and Identity in Rio de Janeiro's Favelas. **Latin American Politics & Society**, Vol. 48, 4, 2006.

<sup>49</sup> BUSCAGLIA Edgardo. Investigating the links between Access to Justice and Governance Factors: An objective indicators' approach. **Global Programme against Corruption Research and Scientific Series (United Nations Center for International Crime Prevention)**, No. CICP-13, 2001.

<sup>50</sup> BUSCAGLIA Edgardo. Investigating the links between Access to Justice and Governance Factors: An objective indicators' approach. **Global Programme against Corruption Research and Scientific Series (United Nations Center for International Crime Prevention)**, No. CICP-13, 2001.

<sup>51</sup> BUSCAGLIA Edgardo. Investigating the links between Access to Justice and Governance Factors: An objective indicators' approach. **Global Programme against Corruption Research and Scientific Series (United Nations Center for International Crime Prevention)**, No. CICP-13, 2001; and BUSCAGLIA, Edgardo; STEPHAN, Paul.

seeking court services and ADRMs over time. Mediations, arbitrations, dispute boards and combinations of the three were the most common mechanisms across our sample of 16 countries. In each of the countries, the samples within selected rural jurisdictions were stratified based on socio-economic factors (income level, patterns of trade and economic activity, age distribution, and gender composition).<sup>52</sup> As for land tenure, rural households in 9 countries had formal or informal title to small plots of land of less than 5 hectares. In the remaining 7 countries, small holders had title to less than nine hectares. The governance variables included local perceptions of procedural transparency, effectiveness of dispute resolution mechanisms, quality of decisions reached by both courts and by informal dispute mechanisms, levels of corruption, enforceability of rulings, and accountability of those responsible for generating rulings.

Later international comparative empirical research in Buscaglia also summarises our account of judicial performance within rural jurisdictions between 2003 and 2011.<sup>53</sup> The present empirical study aims at corroborating the Buscaglia findings but in this case applied to organised crime cum political corruption case types reaching the court systems of 20 countries and the access to justice in such case types.<sup>54</sup> Within this framework, Buscaglia and this 2017 jurimetric study findings reconfirm that Botswana, Chile, Colombia and Uruguay have experienced improvements in judicial performance pertaining the

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An Empirical Assessment of the Impact of Formal versus Informal Dispute Resolution on Poverty: a Governance-Based Approach. **International Review of Law & Economics**, Vol. 25, 1, 2005.

<sup>52</sup> The sample size of rural households was as follows: Argentina: 3749, Benin: 2891, Brazil: 6329, Bolivia: 1718, Botswana: 1943, Chile, 1392, Colombia 3178, Congo: 561, Guatemala: 993, Honduras: 816, Mozambique: 2193, Nicaragua 1203, Nigeria 7921, Paraguay: 931, Peru: 1610, South Africa: 3915; Uganda: 658; Uruguay: 719, and Venezuela: 1961. In each of the countries, the samples within each of the selected jurisdictions are stratified into socio-economic respect (income level, patterns of trade and economic activity, age distribution, gender composition, etc.).

<sup>53</sup> BUSCAGLIA, Edgardo. Dispute resolution mechanisms provided by violent non-state actors: An international comparative analysis of causes and consequences. In: Stefano Ruzza; Anja Jakobi; Charles Geisler (eds.). **Non-State Challenges in a Re-Ordered World: The Jackals of Westphalia**. London: Routledge, 2015.

<sup>54</sup> BUSCAGLIA, Edgardo. Dispute resolution mechanisms provided by violent non-state actors: An international comparative analysis of causes and consequences. In: Stefano Ruzza; Anja Jakobi; Charles Geisler (eds.). **Non-State Challenges in a Re-Ordered World: The Jackals of Westphalia**. London: Routledge, 2015.

judicial handling of organised crime and political corruption indictments entailing asset forfeitures.<sup>55</sup> Moreover, after a 2-year lag, these same 4 countries experienced greater demand for court services and decreasing demand for informal dispute resolution mechanisms offered by non-state armed criminal networks.

In short, our 2 surveys documenting land-dispute resolution experiences of households (as per court users and ADR users) explained and previously analysed in the literature<sup>56</sup> consistently showed that:

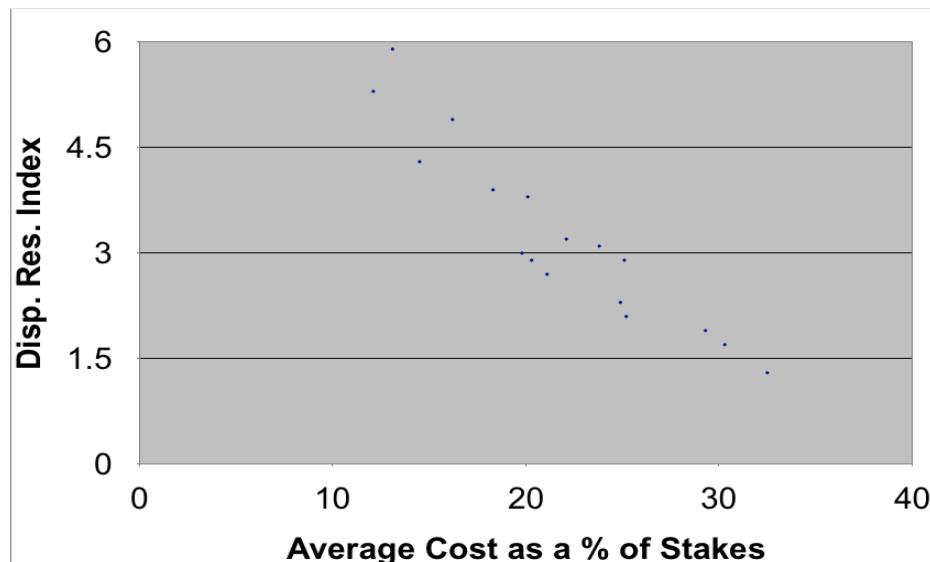
- (1) The rural households within the bottom 20 per cent of the net-worth scale within each country aim at resolving land disputes through informal land dispute resolution mechanisms and these were perceived as more legitimate, less corrupt, less complex, and more efficient than court-related mechanisms;
- (2) Dispute resolution settlements using formal judicial mechanisms decreased the rural households' net-worth whereas rural households seeking ADRMs experience households' net worth increases after the resolution was implemented; and
- (3) Countries with a wider availability of court-related and alternative informal and formal land dispute resolution options are also countries within which access to these mechanisms is offered at a lower cost as a percentage of the value of the property at stake (i.e. the direct cost of access as a percentage of the value of the land at stake). This as an indicator of access to justice as a human right or, in other words, an economic analysis of the human right to access dispute resolution mechanisms. The Graph below addresses this empirical finding by providing such evidence covering 16 countries. Each point on the graph indicating a country's position in terms of the number of ADRMs available and the cost of access. The Graph

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<sup>55</sup> BUSAGLIA, Edgardo. Dispute resolution mechanisms provided by violent non-state actors: An international comparative analysis of causes and consequences. In: Stefano Ruzza; Anja Jakobi; Charles Geisler (eds.). **Non-State Challenges in a Re-Ordered World: The Jackals of Westphalia**. London: Routledge, 2015.

<sup>56</sup> BUSAGLIA, Edgardo. An analysis of judicial corruption and its causes: an objective governing-based approach. **International Review of Law and Economics**, Vol. 21, 2, 2001; and BUSAGLIA, Edgardo; STEPHAN, Paul. An Empirical Assessment of the Impact of Formal versus Informal Dispute Resolution on Poverty: a Governance-Based Approach. **International Review of Law & Economics**, Vol. 25, 1, 2005.

below shows an inverse relationship between the number and diversity of dispute resolution mechanisms in each country measured on the vertical axis through an index of the number of formal court-related and ADRMs available within regions where organised crime groups also operate. The total cost of access to dispute resolution as a proportion of the properties at stake in the disputes is measured on the horizontal axis. The Graph below shows an inverse relationship between the two variables where a country's more diverse menu of dispute resolution mechanisms goes hand in hand with lower costs to access dispute resolution mechanisms. This law and economics analysis of the human right to access dispute resolution mechanisms attests to the importance of lowering costs of access by providing a diverse set of dispute resolution alternatives for the most marginalised segments of the population.



As noted above, informal channels for dispute resolution can be community or tribal-based mechanisms or can be provided by criminal networks and armed insurgencies. For example, in Botswana and Colombia, land-title disputes among small farm plots are mostly rooted

in issues surrounding debt and inheritance.<sup>57</sup> Informal tribal, rural or neighbourhood bodies are usually composed of 2 to 7 members (depending on the country sampled) and in many (but not all) cases enjoy legitimacy emerging from their religious or community leadership or their social prestige as “providers” of political, social, healthcare, or even military and political “social goods” such as electoral processes, religious schools, basic health centres and paramilitary social protection. For example, the Complaint Board or Panels in Colombia are composed of 3 “prominent local residents” selected by a Rural Council (*Parroquias Vecinales*) who enjoy popular legitimacy.<sup>58</sup> Although the decision of the Board was not legally binding, they received tacit support from municipal authorities. Survey Bureaus within the municipal governments of 3 Colombian regions used to refer to the Boards’ resolutions in order to substantiate their rulings.<sup>59</sup> Board decisions were not appealed and informal social control mechanisms usually lead to social enforcement. Within countries reporting dispute resolution by non-state actors based on traditional ADRMs, previous studies found that decreasing judicial performances in land dispute case-types (larger caseloads, greater delays, and higher frequencies of substantive abuses of judicial discretion) came hand-in-hand with more frequent demand for ADRMs by rural populations. For example, Congo and Mozambique, the worst civil court performers in case files linked to land disputes were associated with an increase in rural households seeking informal land dispute resolution mechanisms provided by armed non-state organisations (e.g. Mai Mai) or by traditional ADRMs provided by elders.<sup>60</sup> Similar patterns of deterioration in judicial performance (in accordance to Table 1 above) and greater demand for informal ADRMs were found in Argentina, Benin, Bolivia, Honduras, Guatemala, Mexico, Mozambique, Nigeria, Paraguay Peru, and Venezuela.

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<sup>57</sup> WOJKOWSKA, Ewa. **Doing justice: How Informal Justice Systems can contribute.** New York, NY: United Nations Development Programme, 2006.

<sup>58</sup> BUSAGLIA Edgardo. Investigating the links between Access to Justice and Governance Factors: An objective indicators’ approach. **Global Programme against Corruption Research and Scientific Series (United Nations Center for International Crime Prevention)**, No. CICP-13, 2001.

<sup>59</sup> BUSAGLIA, Edgardo; STEPHAN, Paul. An Empirical Assessment of the Impact of Formal versus Informal Dispute Resolution on Poverty: a Governance-Based Approach. **International Review of Law & Economics**, Vol. 25, 1, 2005.

<sup>60</sup> BUSAGLIA, Edgardo; STEPHAN, Paul. An Empirical Assessment of the Impact of Formal versus Informal Dispute Resolution on Poverty: a Governance-Based Approach. **International Review of Law & Economics**, Vol. 25, 1, 2005.

#### IV. THE SUPPLY OF ADRMs AS SUPPORT FOR THE VERTICAL INTEGRATION OF CRIMINAL NETWORKS AND POLITICAL CORRUPTION

There is a fundamental premise (and not just an assumption) in the law and economics of organised crime.<sup>61</sup> Buscaglia and Gonzalez Ruiz and Buscaglia provide case studies on how all transnational criminal networks devoted to committing diverse types of complex crimes in a sustainable and stable basis always aim at monopolising markets through horizontal and vertical integrations within their illegal and legal markets.<sup>62</sup>

Vertical and horizontal integrations within legal and illegal markets is the natural objective of any organised crime network aimed at stabilising and predicting its supply chains of key inputs from legal markets in the midst of competition with other violent criminal networks. In this context, vertical and horizontal integrations are always aimed at reducing business uncertainty and opportunistic behaviour within the supply chain<sup>63</sup>, in order to produce goods (e.g. fentanyl) or services (e.g. forced labor through human trafficking). Moreover, diversification of illegal markets coupled with horizontal and vertical integrations within legal and illegal markets expand the scope of illegal/legal goods and services produced while reducing the risk of placing “all the eggs in one basket” just in case increases in judicial asset forfeiture or competition threaten their business operations or just in case market developments render one or more of their goods & services unprofitable. Moreover, enhancing

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<sup>61</sup> “Organised Crime” as defined in Article 2 of the UN Convention against Organised Crime and its Protocols. *Supra* note 1.

<sup>62</sup> BUSCAGLIA, Edgardo; GONZÁLEZ RUIZ, Samuel. The Factor of Trust and the Importance of Inter-Agency Cooperation in the Fight against Transnational Organised Crime: The US-Mexican Example. **The Management of Border Security in NAFTA: Imagery, Nationalism, and the War on Drugs**, Vol. 15, 1, 2005; and BUSCAGLIA, Edgardo. Dispute resolution mechanisms provided by violent non-state actors: An international comparative analysis of causes and consequences. In: Stefano Ruzza; Anja Jakobi; Charles Geisler (eds.). **Non-State Challenges in a Re-Ordered World: The Jackals of Westphalia**. London: Routledge, 2015.

<sup>63</sup> WILLIAMSON, Oliver. The Economics of Organization: The Transaction Cost Approach. **The American Journal of Sociology**, Vol. 87, 3, 1981; and GROSSMAN, Sanford; HART Oliver. The Costs and Benefits of Ownership: A Theory of Vertical and Lateral Integration. **Journal of Political Economy**, Vol. 94, 4, 1986.

vertical and horizontal integration allow organised criminal networks to reduce their forward-looking transaction costs of conducting money laundering through their own legal businesses.

Yet, horizontal and vertical integrations of criminal organisations also encompass partial control of labour markets to feed the services needed within the aforementioned supply chains which in turn require a certain amount of regional social control by these same transnational criminal organisations in order to obtain such voluntary labor supply. Such social control exercised by transnational organised crime groups come in many forms. For example, in Mexico's Michoacán region there were 2 criminal networks known as "Familia Michoacana" and "Caballeros Templarios" enjoying a virtual regional monopoly in their supply of synthetic drugs coupled with horizontal integration into 12 other criminal markets and at least 5 legal economic sectors (e.g. avocado production, transportation businesses, construction firms, preventive health services, retail food supply and hotels within the tourism sector).<sup>64</sup> In this context, Buscaglia describes field *in situ* visits to regions in Michoacan where these same 2 criminal groups supplied "social goods" within their controlled regions (e.g. Mil Cumbres) such as water irrigation infrastructure for their rural production units of avocados, infrastructure devoted to sewage, the building of schools and even churches, coupled with the supply of dispute resolution mechanisms for the general population under their regional social control.<sup>65</sup> In return, both criminal networks obtained a reliable supply of labour and land to satisfy their needs in the legal and illegal markets.

These kinds of vertical and horizontal integrations as explained above always occur in the midst of many kinds of "State vacuums" in the provision of public goods and services (e.g. water, schooling, preventive health and justice) as documented in Buscaglia.<sup>66</sup> In other words, the lack of public access to court services by segments of economically vulnerable rural populations coupled with the political corruption-linked incapacities of law enforcement to conduct asset forfeiture statutes allowed criminal networks to vertically expand their business infrastructure while supplying alternative dispute resolution

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<sup>64</sup> Available at: <[https://nl.m.wikipedia.org/wiki/La\\_Familia\\_Michoacana](https://nl.m.wikipedia.org/wiki/La_Familia_Michoacana)>. Accessed at: February 23, 2018.

<sup>65</sup> BUSCAGLIA, Edgardo. **Vacíos de Poder en Mexico**. Ciudad de México, DF: Random House Mondadori, 2013.

<sup>66</sup> BUSCAGLIA, Edgardo. **Vacíos de Poder en Mexico**. Ciudad de México, DF: Random House Mondadori, 2013.

mechanisms to the public as a form of social control to obtain labor and private property services from the “captive” populations.

Twenty countries are identified in column 1 of Table 2 below. These countries were sampled based on the existence of regions within which organised crime networks supply “social goods” (such as ADRMs supplied by the “*Familia Michoacana*” in Mil Cumbres in Michoacán, Mexico). Nineteen of these countries are the same covered in Table 1 where the judicial efficiency in handling organised crime linked to political corruption case files is measured (with the exception of Uganda covered only in Table 1 and Brazil covered only in Table 2). Based on the above analysis, the country-specific data time series in Table 2 below cover the period 2004-2015. In column 4 below Table 2 measures the number of criminal markets for the supply of goods and services covered in each country by a specific transnational criminal network at two moments in time, in 2004 and in 2015 (e.g. A criminal network trafficking only drugs, human beings and arms would be assigned an indicator equal to “3”). Table 2 in column 2 also measures at two moments in time, in 2004 and in 2015, the annual percentages of sampled households experiencing land-related disputes and demanding ADRMs provided by a traditional body or by a criminal network.<sup>67</sup> Column 3 denominates each transnational criminal network supplying ADRMs and column 5 measures the scale (1 to 6) of the supply chain of legal and illegal goods and services controlled by each criminal network in the legal economic sectors.

The hypothesis to be tested states the following: The efficiency of the judicial systems in conducting asset forfeitures of criminal networks engaged in political corruption within the electoral campaign financing and public procurement domains, measured in Table 1, with a two-year lag, do make a significant impact: 1- on the differences in the vertical legal integrations of transnational criminal enterprises within the legal domain (measured in column 3 of Table 2 below); 2- on the differences in the diversity of criminal markets covered by transnational criminal enterprises and 3- on the differences in frequency of supply/demand of alternative dispute resolution mechanisms within regions where these same transnational criminal networks supply “social goods”.

Column 2 of Table 2 measures the percentage of our country-based regional samples of rural households demanding ADRMs from two

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<sup>67</sup> With a larger sample and expanded time series one could also test Granger non parametric causality in accordance to GRANGER, Clive. Investigating Causal Relations by Econometric Models and Cross-Spectral Methods. *Econometrica*, Vol. 37, 3, 1969, p. 424-438.

sources: traditional bodies of elders and armed transnational criminal networks that judicial case files we reviewed also indicted for political corruption. Each of these organised crime groups is identified in Column 3. The percentages of the samples households demanding ADRMs are measured at two points in time, in 2004 and 2015, within each region where criminal networks supply “social goods” (such as water, preventive health, infrastructure, or dispute resolution). For example, in Albania’s border with Kosovo during 2004 we found that 4% of our sample demanded ADRMs from traditional informal bodies while the proportion of the sample increased to 8% in 2015. At these two points in time and within this same Albanian region, 2% of our sample of rural households demanded ADRMs from the Kula criminal network in 2004 while the proportion of our 2015 sample of rural households increased to 5% in 2015. It is noteworthy to remember that during this same period Table 1 shows a sharp deterioration of Albanian judicial performance in this same region with a 24% drop in clearance rates (i.e. sharp increases in time delays) coupled with a 55% increases in judicial errors when conducting asset forfeitures against the Abazi & Boriçi criminal network. Furthermore, column 4 in Table 2 shows that the Abazi & Boriçi network was involved in 12 types of organised crimes in 2004 and 21 types of organised crimes in 2015, including illegal political campaign financing and money laundering through public procurement contracts.

The fifth column indicates the degree of vertical integrations of each criminal network in each country. The vertical integration indicator measures 6 levels of controls of a supply chain for the production of an illegal good or illegal service with “1” indicating the criminal network’s legal control of the distribution business; “2” indicating the the criminal network’s legal control of the distribution and wholesale legal domains; “3” indicating economic the criminal network’s legal control of the distribution, wholesale and transportation infrastructures within the legal domains; “4” indicates the criminal network’s legal control of distribution, wholesale, transportation, and production of the illegal good or service; “5” indicates the criminal network’s legal control of the distribution, wholesale, transportation, production, and inputs (such a coca leaf); and “6” indicates the criminal network’s legal control of distribution, wholesale, transportation, production, inputs, and retail infrastructures. By applying this same vertical integration 1-6 scale to the Albanian Abazi & Boriçi/Kula criminal networks, we see in column 5 of Table 2 below that its vertical integration within the legal economic domains of Albania and Kosovo expanded from “legally” controlling the distribution and wholesale supply chain in 2004 to “legally” controlling the distribution, wholesale, transportation, production, inputs, and retail legal supply infrastructures in 2015. In other words, increases in the

vertical integration indicator of the Kula criminal network reflects the failure of judicial authorities to forfeit criminal assets linked to political corruption and thus the failure to control the economic expansion of the Albanian organised crime network within the legal domains. Therefore, Table 2 show the hypothetical impacts of improvements or deteriorations in judicial performance in forfeiting assets -linked to economic crimes and political corruption- on the decreases or increases in the diversification of organised criminal activities, on the supply of ADRMs and on the reductions or expansions in the vertical integration of specific criminal networks within the legal domain, thus also facilitating money laundering.

Table 2 below also shows that Chile, Colombia, and Uruguay experience less demand for ADRMs provided by transnational criminal networks in 2015 compared to 2004, less diversity of illegal goods and services and less vertical integration in 2015 compared to 2004. In other words, Chile, Colombia and Uruguay are controlling the transnational expansion of their sampled regional criminal networks within the legal vertically integrated and political domains and are also controlling the expansion in the diversity of crimes and reducing the supply of ADRMs by these same criminal networks.

Table 2 – ADRM and vertical integration of transnational criminal networks

| Country   | Percentage of samples of rural households with disputes subject to ADRMs provided by armed vs. non armed groups |   |               | Denominations of transnational criminal networks dedicated to up to 23 types of economic complex crimes                              | Scope (number) of criminal activities of criminal networks in 2004 and in 2015 | Vertical Integration of Legal Business Operations linked to Criminal Activities 2004 and 2015 |
|-----------|---|---|---------------|--|--|---|
|           | Traditional ADR 2004 and 2015   | ADR provided by armed non state criminal networks | 2004 and 2015 |  |  |   |
| Albania   | 4/8   | 2/5   |               | Kula criminal network, which controls drugs, arms and human trafficking from Turkey, the Abazi and Boricj families (Buscaglia, 2015) | 12/21 types  | 2/6   |
| Argentina | 3/5   | 1/2   |               | Sung I and Ming Families within the TriBorder Area of Argentina, Brazil and Paraguay plus Uruguay (Hudson, 2003)                     | 8/18 types   | 4/5   |
| Benin     | 48/51   | 7/11  |               | Kakudu group operating in Benin, Togo, Nigeria and South Africa (United Nations Office on Drugs and Crime, 2005)                     | 11/20 types  | 5/6   |

## THE VERTICAL INTEGRATION OF ORGANISED CRIME

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|              |       |       |  |             |     |
|--------------|-------|-------|--|-------------|-----|
| Bolivia      | 39/41 | 7/8   | "La Corporación" (Farer, 1999)   | 6/11 types  | 5/6 |
| Botswana     | 53/37 | 4/1   | Okavango Delta network covering Gems, human, drug trafficking covering Angola and Botswana (Buscaglia 2015)  | 8/3 types   | 3/1 |
| Brazil       | 38/21 | 2/1   | PCC and CV both groups provide ADR to favelas in São Paulo and Rio (Birol & Dal Ri, Jr., 2011)<br>Sung I and Ming Families within the TriBorder Area of Argentina, Brazil and Paraguay plus Uruguay (Hudson, 2003) | 6/10 types  | 3/5 |
| Chile        | 19/9  | 2/0   | Sung I and Ming Families (Buscaglia, 2015)   | 3/2 types   | 2/1 |
| Colombia     | 21/6  | 17/4  | Diego Montoya & Wilber Varela, Norte del Valle organization (Buscaglia, 2015)  | 11/5 types  | 5/2 |
| Congo        | 87/96 | 87/96 | Mai Mai (Mayi-Mayi) organization in Kivus (Coalition to Stop the Use of Child Soldiers, 2010)  | 11/19 types | 3/6 |
| Guatemala    | 49/56 | 25/38 | Sinaloa Criminal Network (Buscaglia, 2013, 2015)   | 13/21 types | 4/6 |
| Honduras     | 24/38 | 11/16 | Sinaloa Criminal Network (Buscaglia, 2013, 2015)   | 10/19 types | 3/5 |
| Indonesia    | 12/13 | 4/3   | Free Aceh Movement (GAM) (Wahyono, 2010)   | 4/12 types  | 2/5 |
| Mozambique   | 77/89 | 8/21  | Kakudu group operating in Benin, Togo, Nigeria and South Africa (Buscaglia, 2015)  | 6/13 types  | 3/6 |
| México       | 12/29 | 18/39 | Sinaloa Criminal Network (Buscaglia, 2013, 2015)   | 18/23 types | 2/6 |
| Nigeria      | 62/67 | 6/8   | Kakudu group operating in Benin, Togo, Nigeria and South Africa (United Nations Office on Drugs and Crime, 2005)   | 11/22 types | 4/6 |
| Paraguay     | 45/49 | 26/29 | Sung I and Ming Families within the TriBorder Area of Argentina, Brazil and Paraguay (Hudson, 2003)  | 15/19 types | 3/5 |
| Peru         | 31/37 | 2/6   | Zevallos Organization linked to Shining Path (Buscaglia, 2015)   | 10/18 types | 2/4 |
| South Africa | 45/32 | 1/3   | Kakudu group operating in Benin, Togo, Nigeria and South Africa (Buscaglia, 2015)  | 5/14 types  | 2/4 |
| Uruguay      | 23/12 | 0/0   | Sung I and Ming Families within the TriBorder Area of Argentina, Brazil and Paraguay plus Uruguay (Hudson, 2003)   | 7/5 types   | 3/2 |
| Venezuela    | 17/48 | 2/9   | Diego Montoya & Wilber Varela, Norte del Valle organization.<br>Sinaloa Criminal Network (Buscaglia, 2013, 2015)   | 8/22 types  | 4/6 |

We will now test the hypothesis explained above to determine if judicial improvements in judicial asset forfeitures linked to indictments for organised crime with political corruption in electoral campaign financing and public procurement measured in Chile, Colombia and

Uruguay between 2004 and 2015 come hand in hand with less diversity of criminal markets and less capacity of these same criminal networks to vertically integrate to acquire greater market power. In column 2, we see that Botswana, Chile, Colombia and Uruguay experience decreases in the frequencies of ADRMs provided by informal traditional bodies and by armed groups (e.g., such as FARC in Colombia). Specifically, we can see that in 2004, 21 per cent of sampled households in two sampled Colombian regions sought land dispute assistance from traditional non-armed groups (*juntas comunitarias*), but only 6 per cent of sampled households did obtain dispute resolution services from traditional informal bodies in 2015. The role of armed groups as providers of ADRMs in these same two regional samples in Colombia also decreased from 17 per cent of our household sampled in 2004 to 4 per cent of our household sampled in 2015. The same decreases in the frequencies of ADRMs can be observed in column 2 for Botswana, Chile and Uruguay. The opposite effect occurs in those countries within which judicial systems experience the most significant deteriorations in performance. Congo, Mexico and Guatemala stand out as the worst judicial performers within the 20-country sample in Buscaglia and Stephan and in Buscaglia.<sup>68</sup> While in Congo the percentages of sampled households receiving ADRMs from armed groups increased from 87 per cent in 2004 to 96 per cent of our sample of households in 2011, in Guatemala the increase was from 25 per cent in 2004 to 38 per cent in 2015, and in Mexico from 18 per cent to 39 per cent of the sampled households in the same period.

In accordance with our transaction cost hypothesis explained above, the judicial worst performers experienced higher growths in frequencies of demand and supply of ADRMs supplied by organised crime groups. Our hypothesis also states that criminal networks expanding the supply of ADRMs would be associated with significant increases in the diversification of economic crimes between 2004 in 2015. In fact, judicial case files reviewed by our teams show that Congo's criminal network increased its diversification from 11 to 19 types of economic crimes, Guatemala's criminal network increased from 13 types of crimes in 2004 to 21 types in 2015; and Mexico's sampled criminal networks increased

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<sup>68</sup> BUSCAGLIA, Edgardo; STEPHAN, Paul. An Empirical Assessment of the Impact of Formal versus Informal Dispute Resolution on Poverty: a Governance-Based Approach. **International Review of Law & Economics**, Vol. 25, 1, 2005; and BUSCAGLIA, Edgardo. Dispute resolution mechanisms provided by violent non-state actors: An international comparative analysis of causes and consequences. In: Stefano Ruzza; Anja Jakobi; Charles Geisler (eds.). **Non-State Challenges in a Re-Ordered World: The Jackals of Westphalia**. London: Routledge, 2015.

their criminal markets diversity from 18 goods and services in 2004 to 23 types of crimes in 2015. As Williamson<sup>69</sup> theoretical framework would predict, these same countries experienced the largest increases in criminal networks' vertical integration within the legal domains of their economy.<sup>70</sup> Specifically, Congo's criminal network was identified through judicial investigations operating legal businesses in 5 African countries covering 3 stages of its supply chain in 2004 while the same criminal network was operating legal businesses in 7 African countries and covering all 6 stages of vertical integration in 2015. Sampled judicial case files in Guatemala and in Mexico show that both countries had their sampled criminal networks increasing their scope of vertical integration within their legal economies to the maximum level of "6" stages of the supply chains, thus controlling the production of inputs, the production of the final good or service, the transportation infrastructure, the distribution networks, the wholesale and the retail domains.

It is noteworthy from the Graph above that the bypassing of judicial institutions and the increases in the demands for ADRMs to solve disputes will tend to reduce the average costs of access as a proportion of the value at stake in the dispute only if there is an increase in the number and scope of ADRMs available. Yet, as already explained, households' surveys in Buscaglia and in Buscaglia and Stephan show that not all informal dispute resolution mechanisms are similar.<sup>71</sup> Informal dispute

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<sup>69</sup> WILLIAMSON, Oliver. The Economics of Organization: The Transaction Cost Approach. **The American Journal of Sociology**, Vol. 87, 3, 1981.

<sup>70</sup> These economic crimes include: Illegal drug trafficking; advanced fee and Internet fraud; Other types of cyber-crimes; human trafficking; diamond smuggling; forgery of documents and passports; cigarette smuggling; trafficking of car parts and stolen vehicles; money-laundering; arms manufacture and trafficking; armed robbery; oil bunkering; piracy; counterfeiting; (trafficking of natural resources); trafficking of antiquities and cultural property. See BUSCAGLIA, Edgardo; VAN DIJK, Jan. Controlling Organized Crime and Corruption in the Public Sector. **Forum on Crime and Society**, Vol. 3, 1-2, 2003.

<sup>71</sup> BUSCAGLIA, Edgardo. An analysis of judicial corruption and its causes: an objective governing-based approach. **International Review of Law and Economics**, Vol. 21, 2, 2001; BUSCAGLIA Edgardo. Investigating the links between Access to Justice and Governance Factors: An objective indicators' approach. **Global Programme against Corruption Research and Scientific Series (United Nations Center for International Crime Prevention)**, No. CICP-13, 2001; and BUSCAGLIA, Edgardo; STEPHAN, Paul. An Empirical Assessment of the Impact of Formal versus Informal Dispute Resolution on Poverty: a Governance-Based Approach. **International Review of Law & Economics**, Vol. 25, 1, 2005.

resolution mechanisms provided by armed organised crime groups in Afghanistan (such as the Noorzai and Juma Khan networks) or in Congo (Mai-Mai in the eastern regions of North and South Kivu) that do not offer the possibility of having their decisions validated by formal authorities, at the municipal or court levels, lack comparative advantages over the ones provided by traditional mechanisms such as *Jirgas* and *Shuras* in Afghanistan and Pakistan or *Juntas Parroquiales* in Colombia.

Much of the foundational theoretical frameworks on criminal enterprises found in Schelling's (1971) seminal work and its extensions reflected in Gambetta approach the analysis of the social foundations of criminal organisations as alternative public governance structures emerging in the midst of weak or absent states subject to different types of institutional failures.<sup>72</sup> Within these frameworks, one of the premises in the the 20-country analysis covered here is that alternative dispute resolution mechanisms are a channel for criminal associations to capture the social fabric in order to obtain economic inputs for their production of illegal goods and services (e.g. land and labor) in exchange for social protection rackets. Buscaglia shows that the more a criminal association diversifies its economic activities from drug trafficking into human and arms trafficking, gambling, cybercrime, counterfeiting and diverse smuggling, the more it needs to demand labor and capital from its surroundings in exchange for the supply of social services (e.g. ADRMs) with a deeper penetration of the social fabric in order to minimise the transaction costs of the criminal organisation as predicted by Williamson.<sup>73</sup> In this context, Table 2 above showed that all of the transnational criminal groups listed are diversified in their scope of economic activities and the greater diversification of criminal markets is associated with a greater immersion in the social fabric of the communities through the more frequent supply of ADRMs . In areas where criminal associations possess greater diversification of their

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<sup>72</sup> See SCHELLING, Thomas. What is the Business of Organized Crime? **The American Scholar**, Vol. 40, 4, 1971; and GAMBETTA, Diego. **The Sicilian Mafia: The Business of Private Protection**. Cambridge, MA: Harvard University Press, 1993.

<sup>73</sup> BUSCAGLIA, Edgardo. Dispute resolution mechanisms provided by violent non-state actors: An international comparative analysis of causes and consequences. In: Stefano Ruzza; Anja Jakobi; Charles Geisler (eds.). **Non-State Challenges in a Re-Ordered World: The Jackals of Westphalia**. London: Routledge, 2015; and WILLIAMSON, Oliver. Transaction Costs Economics: An Introduction. **Economics Discussion Papers**, No. 2007-3, 2007. Available: <[http://www.economics-ejournal.org/economics/discussionpapers/2007-3/at\\_download/file](http://www.economics-ejournal.org/economics/discussionpapers/2007-3/at_download/file)>. Accessed at: February 23, 2018.

business in legal and illegal markets they will also seek wider logistic and human resource support to sustain their operations. This greater capture of the social fabric entails the more frequent provision of "social" goods and services, such as dispute resolution, thus confirming the effect predicted by the economic analysis of access-to-justice theories in Buscaglia and later Milhaupt & West.<sup>74</sup>

Based on jurimetric data in Tables 1 and 2, let us now test this hypothesis by running a Non Parametric Multiplicative Regression (NPMR).<sup>75</sup> The hypothesis to be tested states that *decreases* in the efficiency of judicial indicators covering a 20-country stratified samples of judicial case-files addressing criminal forfeitures of organised criminal networks involved in two types of political corruption (illicit political campaign financing and public procurement), with a five-year lag, are NOT linked with significant 1- *increases* in the vertical legal integration of criminal enterprises; 2- *increases* in the diversity of criminal activities and 3- *increases* in the frequencies of the supply of alternative dispute resolution mechanisms by these same criminal networks.

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<sup>74</sup> See BUSCAGLIA, Edgardo. Legal and Economic Development: The Missing Links. **Journal of Interamerican Studies and World Affairs**, Vol. 35, 4, 1994; BUSCAGLIA Edgardo. Investigating the links between Access to Justice and Governance Factors: An objective indicators' approach. **Global Programme against Corruption Research and Scientific Series (United Nations Center for International Crime Prevention)**, No. CICP-13, 2001; and MILHAUPT, Curtis; WEST, Mark. The Dark Side of Private Ordering: An Institutional and Empirical Analysis of Organized Crime. **University of Chicago Law Review**, Vol. 67, 1, 2000.

<sup>75</sup> Nonparametric multiplicative regression (NPMR) is a regression like other regression methods, estimating dependent variables based on one or more predictors. NPMR can be used as a regression method if the following applies: 1) The distribution of the dependent variable is unknown. 2) The predictors interact with each other in jointly affecting the dependent variable; in other words, the response to one predictor is likely to depend on other predictors. 3) The response is a quantitative or binary (0/1) variable.

**Table 3 – Test Statistics**

Reject the Hypothesis if the statistical test  $\geq$  critical value at  $\alpha = 5\%$

|                             | <b>Vertical integration</b> | <b>Diversity of markets</b> | <b>ADRM</b> |
|-----------------------------|-----------------------------|-----------------------------|-------------|
| (Sum of Ranks) <sup>2</sup> | 319251                      | 71481                       | 49270       |
| Numbers of columns          | 2.                          | 2.                          | 2           |
| Numbers of Rows             | 20.                         | 20.                         | 20          |
| Test Statistics             | 10.057.                     | 12.613                      | 9.501       |

*All tests statistics are significant at a 5% level*

In Table 3 above, we reject the above hypothesis with the conclusion that decreases in the efficiency of judicial systems in handling these criminal forfeitures case-types, with a five-year lag, do make a significant difference in increasing the market power and vertical legal integration of criminal enterprises within the legal economic sectors and thus increases the criminal networks' capacities to produce a more diverse range of illegal and legal goods and services. Therefore, Table 3 verifies that increases in the efficiency of judicial indicators within criminal forfeitures case-types in Table 1 are coming hand in hand with a decrease in the diversity of criminal activities and with lower frequencies in the demand of alternative dispute resolution mechanisms by organised crime networks measured in Table 2.

## V. CONCLUDING MARKS

The improvements in the judicial efficiency when conducting criminal asset forfeitures against organised armed networks dedicated to human trafficking, drugs trafficking, arms trafficking, illegal political campaign financing, money laundering through public procurement and many other types of economically complex & serious crimes is one of the main objectives of international United Nations' conventions ratified by more than 170 countries worldwide and by the 20 countries sampled for this study.

Furthermore, greater judicial efficiency when conducting criminal asset forfeitures against these types of transnational organised networks engaged in political corruption throughout many countries at the same time strengthens the human right to participate in clean political elections

with no coercion and also strengthens the access to justice by victims of organised crime in order to receive compensation for civil and criminal damages. Countries such as Italy have moved forward and legislated the explicit rights of victims of organised crime to be directly served and directly compensated through the proceedings of organised crime assets' forfeitures. Therefore, the indicators of the judicial efficiency in forfeiting assets in the hands of organised crime is also an indicator of enhancing the 2 human rights to vote and to access justice. In this regard, this study aims at providing an empirical approach to measuring and evaluating the exercise of these 2 political and civil rights and other human rights.

As a specific type of non-state armed group, criminal organisations rely on their protection rackets by providing "social goods" (such as dispute resolution) to the most marginalised segments of the population as a way to guarantee the supply chains of land and cheap labour to diversify its legal and illegal economic businesses. These organised crime protection rackets always cover "vacuums" left by conspicuous state failures in providing public goods (e.g. water, basic human security or judicial services). The jurimetric analysis addressed above demonstrates this point. Moreover, the perverse practice of capturing the social fabric of communities within which economic crimes are conducted is part of this process. In this *quid pro quo* manner, segments of societies are subject to protection rackets by non-state groups through diverse types of dispute resolution mechanisms in the Russian-style organised crime syndicate tradition explored by Farer.<sup>76</sup>

As criminal organisations composed of non-state actors generate different types of profitable businesses (through physical, collective, or economic violence) in association with criminal networks of politicians, these same criminal networks feed on the existence of regulatory state failures and state vacuums (i.e. states that are either too absent or too imposing on people's lives thus causing high transaction costs in social interactions). These types of state failure include the judicial system's incapacities, its extreme procedural complexities, its rampant corruption, and its lack of access to dispute resolution channels. In this kind of environment characterised by legal and judicial uncertainty, production and investment planning is difficult. Such uncertainty linked to property rights affects all segments of the population (rich, middle class, and poor), but it affects the poorest the most. Engaging judicial policies to correct these regulatory failures would take away social oxygen from non-state armed groups in general, and criminal associations in particular.

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<sup>76</sup> FARER, Tom. (ed). **Transnational Crime in the Americas: An Inter-American Dialogue Book.** New York, NY: Routledge, 1999.

Paradoxically, “weak” or “inefficient” judiciaries may stay afloat due to alternative informal dispute resolution “services” addressing a majority of legal conflicts within a society, thus representing a source of institutional inertia blocking much-needed judicial reforms. In other words, state weakness is sometimes sticky and weak judiciaries may remain weak because judicial officials may lack reasons to seek reforms of their institutions by channeling case files to the informal domain, thus using ADRMs as an escape valve for the formal court system. Illegal benefits and payoffs from political and judicial corruption create further resistance to governance-enhancing judicial reforms in the midst of these escape valves provided by informal dispute resolution, both legal and illegal. Yet, international experiences, for example in Colombia and in Italy, show that this paradoxical impasse can be overcome through electoral system reforms and political campaign financing legal reforms strongly pressured by unified civil society initiatives. These country experiences are addressed in Buscaglia and Dakolias and in Buscaglia.<sup>77</sup>

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<sup>77</sup> See BUSCAGLIA, Edgardo; DAKOLIAS, Maria; RATLIFF, William. **Judicial Reform in Latin America: a Framework for National Development**. Stanford, CA: Hoover Institution Press, 1995; BUSCAGLIA, Edgardo; DAKOLIAS, Maria. Comparative International Study of Court Performance Indicators: A Descriptive and Analytical Account. **The World Bank (Legal and Judicial Reform Unit)**, Report No. 20.177, 1999; BUSCAGLIA, Edgardo. Introduction to law and economics of development. In: Edgardo Buscaglia; William Ratliff; Robert Cooter (eds.). **The Law and Economics of Development**. Greenwich, CT: JAI Press, 1997; BUSCAGLIA, Edgardo. **Judicial Corruption in Developing Countries: Its Causes and Economic Consequences**. Stanford, CA: Hoover Institution Press, 1999; BUSCAGLIA, Edgardo. **Vacíos de Poder en Mexico**. Ciudad de México, DF: Random House Mondadori, 2013; and BUSCAGLIA, Edgardo. Dispute resolution mechanisms provided by violent non-state actors: An international comparative analysis of causes and consequences. In: Stefano Ruzza; Anja Jakobi; Charles Geisler (eds.). **Non-State Challenges in a Re-Ordered World: The Jackals of Westphalia**. London: Routledge, 2015. International experiences breaking with this paradoxical impasse are addressed in BUSCAGLIA, Edgardo. Legal and Economic Development: The Missing Links. **Journal of Interamerican Studies and World Affairs**, Vol. 35, 4, 1994; and BUSCAGLIA, Edgardo. On best and not so good practices for addressing high-level political corruption worldwide: an empirical assessment. In: Susan Rose-Ackerman; Tina Søreide (eds.). **International Handbook on the Economics of Corruption, Volume Two**. Northampton, MA: Edward Elgar Publishing, 2011. Electoral legal reforms pushed by civil society initiatives in a bottom-up manner within, for example Colombia and Italy, were able to “refresh” and renew

A main implication of this piece is that the greater efficiency of supra national and national judiciaries in cooperating and dismantling through asset forfeitures the market power derived from the vertical integration of criminal associations also represent a way to address institutional “state vacuums” and rescue the social fabric used by these criminal associations to protect their criminal operations. This makes judicial reforms aimed at criminal and civil asset forfeitures a powerful tool to counteract the societal and political foundations of organised crime.

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the composition of political elites in order to “vote” for judicial reforms addressing the criminal asset forfeitures linked to organised crime and political corruption.

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