

Developing a Conceptual Measurement Framework for Measuring Access to
Justice in Post-Conflict Settings

by

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Abstract

Access to justice has been recognized as an essential component of peace, sustainable development and conflict resolution. The international community acknowledged this significance with the 2015 adoption of the United Nations 2030 Agenda for Sustainable Development and, in particular, Sustainable Development Goal 16- Peace, Justice, and Strong Institutions. Due to the many distinctive characteristics of post-conflict settings, attempting to measure access to justice in post-conflict environments remains challenging. In order to develop a conceptual measurement framework for use in post-conflict situations, this qualitative study reviews and analyzes the literature on access to justice, existing measurement tools designed to measure the concept, and data gathered through consultations with 10 subject matter experts in San Jose, Costa Rica. The resulting conceptual measurement framework accounts for the unique and varied ways that access to justice is experienced in post-conflict environments and suggests feasible options for implementation in the field.

Keywords: access to justice, rule of law, peacebuilding, sustainable development goals, SDG 16, post-conflict, measurement, indicators, conceptual framework

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List of Acronyms

AJAT	Access to Justice Assessment Tool
AU	African Union
CEDAW	Committee for the Elimination of Discrimination against Women
DPKO	Department of Peacekeeping Operations
GPS	Governance Peace and Security
IAEG	Inter-agency Group
MDGs	Millennium Development Goals
NSOs	National Statistical Office
OECD	Organization for Economic Cooperation and Development
OHCHR	Office of the United Nations High Commissioner for Human Rights
ROLI	Rule of Law Indicators
SDGs	Sustainable Development Goals
SHaSA	Strategic Harmonization of Statistics in Africa
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDP	United Nations Development Programme

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Chapter 1: Introduction

Recently, much international attention has focused on strengthening the rule of law and increasing access to justice in post-conflict settings. Affirming the rule of law and improving access to justice for all are increasingly seen as essential elements of peacebuilding and conflict resolution (Kleinfeld, 2012; World Bank, 2011). Together, they play a fundamental role in minimizing violence, resolving conflicts, protecting human, social and political rights, and establishing the conditions necessary for peace and sustainable development. Without adequate and effective access to justice and conflict resolution mechanisms, the cycle of violence cannot be stopped (Faundez, 2003; Wojokowska, 2006; World Bank, 2011). The significance of access to justice has been recognized by the international community with the 2015 adoption of the United Nations *2030 Agenda for Sustainable Development*, and, in particular, Sustainable Development Goal 16 (SDG 16) which seeks “the promotion of peaceful and inclusive societies for sustainable development, the provision of access to justice for all, and building effective, accountable institutions at all levels”. Despite this recognition, and although access to justice and the rule of law are seen as essential to peacebuilding, there is still a gap in fully understanding and measuring the delivery of justice in post-conflict situations.

Due to the relatively recent emphasis placed on access to justice and strengthening justice institutions in relation to both peacebuilding and sustainable development, the need to measure progress towards these goals is receiving attention. For example, in the context of the international community’s efforts to measure progress in implementing the 2030 Sustainable Development Agenda, a broad debate exists on how to measure progress towards SDG 16 and its associated targets relating to peace and access to justice. A global indicator framework for the Sustainable Development Goals (SDGs) was adopted by the General Assembly on 6 July 2017,

based on the work of the Inter-Agency and Expert Group on SDG Indicators (IAEG-SDG) and the United Nations Statistical Commission.¹ This framework represents a starting point with further work needed to refine these indicators at the national, regional and global level. It has additionally been recommended that context-specific measures be developed to supplement the existing indicators. The indicators specifically for SDG 16 are generally considered to be adequate in covering the targets of interest (Jandl, 2017), although they have not resolved the many challenges involved in developing and implementing indicators that fully capture the complex dimensions of access to justice (Botero, Pinzon-Rondon and Pratt, 2016). It is also widely recognized that the currently adopted indicators may not be suitable or applicable in all contexts, and, in particular, in post-conflict environments (Barendrecht, 2011; Institute for Economics and Peace, 2016; United Nations Department of Peacekeeping Operations (DPKO), 2015). In that regard, the work to further refine feasible measurement of access to justice continues through the IAEG-SDG, The United Nations Statistical Commission, Eurostat and other regional authorities, as well as national statistical agencies.

Although rule of law reforms and other initiatives to improve access to justice have taken many forms, their impact remains hard to measure. In general, various approaches have been proposed to monitor and evaluate the impact of these initiatives, however, measuring the impact of rule of law and access to justice activities poses some specific challenges. For example, (1) while there have been improvements in the tools used for data collection, reliable rule of law

¹ United Nations General Assembly resolution on Work of the Statistical Commission pertaining to the 2030 Agenda for Sustainable Development; Annex - Global indicator framework for the Sustainable Development Goals and Targets of the 2030 Agenda for Sustainable Development (A/RES/71/313). Available from: https://unstats.un.org/sdgs/indicators/Global%20Indicator%20Framework_A.RES.71.313%20Annex.pdf

data is often unavailable; (2) it often takes generations to see real change in the rule of law; (3) multiple actors and influences are involved and it is difficult to distinguish between the impacts of their respective efforts; (4) justice and security-sector reforms do not necessarily occur in a linear fashion; and, (5) in circumstances where progress is ascertainable, attributing that progress to a particular entity's assistance can also be challenging. Compounding the above challenges, attempting to measure the impact of rule of law and access to justice reforms in a post-conflict environment typically encounter additional difficulties such as the lack of national capacity to systematically collect and analyze statistical data, the fragility of institutions and a general lack of reliable administrative data on justice institutions (DPKO, 2015; O'Connor, 2015). There are further difficulties relating to measuring access to justice and conflict resolution through informal or traditional justice mechanisms. This is particularly problematic for post-conflict settings where informal mechanisms are often the preference of the local community or the only option available when formal mechanisms have been weakened or discredited as a result of the overall conflict situation. ²

Currently, measuring access to justice, and the effectiveness of access to justice institutions and mechanisms, is still very much a work in progress. Various indicators and monitoring frameworks have been developed and applied to measure progress in improving access to justice. Many of the existing indicators have been presented and analyzed by Marchiori (2015) and are discussed in this thesis. Presently, the only framework specifically developed for measuring rule of law and access to justice in post-conflict environments is the United Nations

² Informal justice generally refers to customary law, village elder councils, village chiefs, religious courts, religious police, and political party security. In Africa, for example, they are possibly involved in up to 90% of justice issues (O'Connor, 2015). They are said to be involved in up to 80% of justice related matters in post-conflict environments (Baker & Scheye, 2009).

Rule of Law Indicators (ROLI) (United Nations, 2011). That particular framework, although limited by the exclusion of informal justice systems, includes access to justice as a major dimension of the rule of law. It is reviewed and discussed extensively in this thesis.

In order to propose a conceptual measurement framework for measuring access to justice which accounts for the many ways justice is accessed, and perhaps achieved, in post-conflict environments, this thesis is organized into 6 chapters. Chapter 1 introduces the topic and presents the research questions. Chapter 2 presents a review of the literature which explores how the access to justice field, concepts, and constructs are relatively new and are still evolving. The various constructs used to describe access to justice, as well as the barriers to access to justice are discussed to ensure that my proposed measurement framework is relevant for use in post-conflict situations. Chapter 2 also presents a systematic analysis of relevant existing measurement tools and indicators to understand how access to justice is currently being constructed and measured. Chapter 3 explains the social constructivist methodology used to conduct this research. Chapter 4 provides the results of preliminary consultations with subject matter experts in San Jose, Costa Rica undertaken to provide a comprehensive understanding of access to justice. The results are presented in Chapter 4 as a case study of key themes of access to justice, as understood by justice and peacebuilding practitioners. Chapter 5 reveals the conceptual measurement framework with Chapter 6 offering recommendations on using the tool.

Statement of the Problem

An ability to monitor and measure people's access to justice in post-conflict situations, including for vulnerable groups and people facing specific obstacles to access, can make a significant impact on the planning and management of rule of law, institution building, and access to justice initiatives that form a crucial part of peacebuilding efforts in a post-conflict situation. The

measurement process can establish baseline levels of access to justice, highlight gaps, and provide accurate information for planning strategies, programming, and interventions. While many frameworks have contributed to the measurement of access to justice, they are not relevant to access to justice as experienced in post-conflict environments, or are not methodologically feasible for use in these situations. An important step in achieving the capacity to measure access to justice is the development of a conceptual measurement framework that identifies and logically relates the various dimensions of the concept and the related issues as they typically present themselves in a post-conflict setting. The creation of such a conceptual framework to identify and logically relate the themes of a concept serves as the beginning stage in further identifying valid constructs and potential indicators (Jackson, 2011; Saisana and Saltelli, 2011). Building on existing literature, information gathered through consultations with subject matter experts, and current access to justice measurement frameworks, the ultimate goal of my thesis is to articulate the main elements of a conceptual measurement framework for monitoring changes in various aspects of access to justice in post-conflict situations.

In developing a conceptual framework to measure access to justice in accordance with the “leave no one behind” principles of the SDGs, it is essential to recognize that conflict situations affect various segments of the population differently. Various groups, particularly vulnerable groups, experience access to justice differently and encounter different barriers to such access. For example, women in all situations of state conflict are disproportionately affected by a variety of rights violations (Bachelet, 2012). It may be presumed that they are further affected if they also belong to a minority or otherwise vulnerable group. When seeking justice for these violations, women experience gender-based discrimination and face cultural structures of inequality perpetuated through both formal and informal justice systems. People with

physical or mental disabilities, sometimes the result of the state conflict itself, or suffering from wounds, trauma, and other forms of victimization also face specific obstacles in seeking justice, redress or compensation (UNDP, 2005). A conceptual framework to measure access to justice in accordance with SDG 16 and based on the principles of human rights and equality, must consider these factors.

Research Questions

One primary question and three sub-questions are explored to assist in conceptualizing a measurement framework for access to justice in post-conflict situations. They are:

Primary Research Question: How can access to justice be measured in post-conflict settings?

Secondary Research Questions:

- What are the main dimensions of access to justice that require measurement and are particularly relevant to post-conflict situations?
- How is access to justice currently being measured at the national and international levels and what are the issues and obstacles typically encountered in measuring it?
- How can the main dimensions of access to justice already addressed in existing literature and measurement frameworks be unified into one reference model applicable to post-conflict settings?

Chapter 2: Literature Review

In this chapter, I examine the concepts of access to justice and rule of law and explore existing research on how access to justice is experienced in post-conflict environments. This will frame the scope of my study and identify the main themes considered for inclusion in my proposed conceptual measurement framework. Furthermore, I consider existing research related to measurement of access to justice, including under the SDGs, conduct a systematic review of

existing measurement tools, and explore the practical realities of using measurement in post-conflict settings. These focus areas identify the current constructs for measuring access to justice as well as emerging practices and gaps. This increases the likelihood that my conceptual measurement framework follows promising measurement trends and is feasible for practical use in post-conflict settings.

2.1 Key Concepts

Access to justice and the rule of law are intrinsically linked and have been identified as being key components of peacebuilding in post-conflict situations (McKay, 2015). Despite this recognition, consensus has yet to be achieved among academics and practitioners on how to define these concepts. Before I explore the barriers to, and measurement of, access to justice, I consider post-conflict settings to determine the context of this thesis. I define key terms and explore the links between access to justice, the rule of law, and human rights.

2.1.1 Post Conflict Environments

A review of the literature demonstrates that it is difficult to define precisely what constitutes a “post conflict” situation. Post-conflict settings are generally defined in the literature by: specific events, such as peace treaties or negotiation agreements; a series of gradual transitions; or, the unique characteristics of the state.

From a conflict management perspective, Mayer (2012) recognizes that conflict is not a linear process with a clearly defined end-point – rather, the termination of conflict occurs in unpredictable stages. He also argues that true resolution of complex conflicts is contingent on resolution at the emotional, cognitive and behavioral levels. Adopting this definition in the context of re-establishing access to justice and the rule of law after state conflict is problematic. In the aftermath of ethnic, racial, national, religious, ideological and political conflict, the

literature demonstrates that the requirements for true resolution as defined by Mayer (2012) can be satisfied, but that this may take many years to achieve (Aiken, 2008; Audergon and Arye, 2005; Kymilcka and Bashir, 2008; Schnabel and Newman, 2014).

Another train of thought uses specific events to mark the end of conflict. Bar- Tal (2000), in an analysis of intractable intergroup conflicts identifies negotiation as the formal termination of a conflict, recognizing that this forms part of a larger resolution process. Along this thread, Nkurunziza (2008), in an analysis of post-conflict African countries, uses two major events to mark the beginning of a post-conflict period – (1) a landmark victory, such as the fall of the capital city and (2) the signing of a comprehensive agreement between the warring parties. Although these events do not mark the complete end of the conflict, he argues that related acts of violence reduce dramatically. Building on this, Kreutz (2010) presents a quantitative data set analyzing the means of termination for inter and intra-state armed conflicts from the years 1946-2005. Disaggregating the data into multiple analytical units, he determined that conflicts do not exclusively end with decisive outcomes, including victory or peace agreements. More often, and consistently among different levels of conflict, conflicts terminate due to unclear circumstances where fighting simply ceases. Government victories or deployment of peacekeepers may reduce the likelihood of recurrence of conflict, but are not determined to be essential to its termination. Brinkerhoff (2005) attempts to define post-conflict in the context of governance reconstruction along three dimensions: the reconstitution of legitimacy, the reestablishment of security and the rebuilding of effectiveness. Post-conflict settings are described as situations where conflict has subsided to a greater or lesser degree, but is still occurring in some parts of the country. Brown, Langer, and Stewart (2011), in developing a typology of situations experienced by post-conflict policymakers, expand on this perspective. They argue that in international wars a formal

surrender, negotiated cessation of hostilities, and/or peace treaties may mark the possible ends of conflict, however, intra-state wars do not normally end abruptly. They propose instead, defining a post-conflict situation along a continuum of specific peace milestones. These include: the cessation of hostilities and violence; the signing of political/peace agreements; demobilization, disarmament and reintegration; refugee repatriation; establishing a functioning state; achieving reconciliation and societal integration; and, economic recovery.

These definitions are unified in the recognition that termination of conflict occurs in unpredictable stages. My focus on measurement of access to justice in post-conflict environments, would benefit more strongly from a definition focussing on the ability to implement measurement initiatives. For example, Forman and Salomons (2000, pg. 2) define post-conflict as, “the period when hostilities have abated to the level where some reintegration and recovery activities can begin.” This definition encompasses a broad range of conflict dynamics and focuses explicitly on the implementation of recovery activities, which may include measurement and data collection. For these reasons, I use this definition to define the parameters of “post-conflict” for my thesis.

Now that I have defined “post-conflict”, I review the characteristics of post-conflict settings. This increased understanding allows me to effectively analyze existing access to justice measurement tools while, ultimately, allowing me to develop a conceptual measurement framework accounting for the unique particulars of these environments.

The literature demonstrates that post conflict settings are not homogenous. Rather, they vary geographically, regarding the history and nature of the conflict, and in the existence of governance and functioning structures. According to the academic literature and practitioner reports, post conflict settings are generally characterized by the following: (Brinkerhoff, 2005;

DPKO, 2004; Edmonds, Mills and McNamee, 2009; Fischer, 2004; Knight, 2008; OECD, 2005; Panić, 2009; UNDP, 2005)

- The reduced (or collapsed) capacity of the justice and security sectors due to damage of infrastructure;
- Lack of capacity and inadequate leadership or high levels of corruption;
- A diversion of funds from justice systems to the conflict;
- Segregation of bureaucracy along ethnic or religious lines;
- Mistrust towards the police and judiciary from the general population;
- The need to address past violations of human rights and atrocities;
- Departure of legal personnel from conflict affected areas due to intimidation and fear;
- Possible militia formation;
- Disarmament, demobilization and reintegration;
- Impunity;
- Impact of displaced populations;
- Increased disenfranchisement; and,
- General instability

An overview of these elements demonstrates that post-conflict environments provide many development and reconstruction challenges. Any initiatives to measure concepts such as access to justice in these environments are challenging (DPKO, 2015). Specifically exploring access to justice, Lalonde and Dandurand (2009) expand, arguing that the difficulties to be surmounted in improving access to justice include: the protracted processes of building democratic institutions and effective law reform, the challenges encountered in maintaining public safety, the difficulties experienced in dealing effectively with the problem of impunity,

and the significant challenges involved in demobilization, disarmament, the reintegration of combatants and the relocation of displaced populations.

These elements provide context for understanding the complexities with accessing justice in a post-conflict environment. Recognizing these challenges, my conceptual measurement framework is intended to be adaptive and responsive to these specific characteristics. Now that the context has been established, I turn my attention to the linkages between access to justice, the rule of law, and human rights.

2.1.2 Access to Justice and the Rule of Law

Clarifying the relationship between access to justice and the rule of law allows for a clear understanding of the concepts of this research. By exploring this relationship, I provide context for my inclusion of measurement frameworks which focus on rule of law rather than access to justice.

The rule of law has been seen as a fundamental building block of sustainable peace and development in countries in conflict and post-conflict situations (Kleinfeld, 2012). Additionally, the rule of law is a key dimension of conflict prevention and resolution (McKay, 2015; UN General Assembly, 2012) and a powerful predictor of the success of peacebuilding during the post-conflict period (Haggard and Tiede, 2014). Access to justice is seen as an essential component of the rule of law (Francioni, 2008; Johnstone, 2017; McKay, 2015).

The rule of law has been defined in various ways. Mani (2002), having explored the challenges of peacebuilding and justice in post-conflict El Salvador, Haiti, Namibia, Mozambique, Cambodia, Rwanda, South Africa, and Guatemala, argues the portrayal of rule law is extremely varied among academics and practitioners; some view rule of law as a goal or a

concept and others as tangible legal institutions. For example, Carothers (2006) defines the rule of law as:

"a system in which the laws are public knowledge, are clear in meaning, and apply equally to everyone. They enshrine and uphold the political and civil liberties that have gained status as universal human rights over the last half-century. In particular, anyone accused of a crime has the right to a fair, prompt hearing and is presumed innocent until proved guilty. The central institutions of the legal system, including courts, prosecutions, and police, are reasonably fair, competent, and efficient. Judges are impartial and independent, not subject to political influence or manipulation. Perhaps most important, the government is embedded in a comprehensive legal framework, its officials accept that the law will be applied to their own conduct, and the government seeks to be law-abiding." (pg.4)

The inclusion of political and civil liberties and universal human rights are promising aspects of this definition, as these rights are often violated in post-conflict settings. The description of the central institutions of the legal system as "courts, prosecutions, and police" (Carothers, 2006, pg.4) suggest a reliance on the formal mechanisms of justice. As I am exploring access to justice as experienced in post-conflict settings, where informal justice is often the most commonly used mechanism, a definition which includes these aspects is more relevant. To explain this, Pouligny (2003), having reviewed the relationship between the UN actors and local human rights NGOs in post-conflict El Salvador, Haiti, Cambodia, Somalia, Mozambique, Bosnia Herzegovina and Kosovo, concluded that rule of law "generally refers, in international discourse, to the guaranteeing of the rights and freedoms of citizens or, in other

words, their security and integrity. This includes equal protection of the law, and non-discrimination, due process, policy accountability and judicial independence as “crucial elements in any peaceful and democratic society.” (pg 60). Pouligny (2003) maintains that in many contexts, the local law has nothing to do with the reality and the informal rules governing the population. She advocates for recognition of, and respect for, local norms in post-conflict peacebuilding, arguing local legitimacy is a necessary focus of post-conflict rule of law building. This observation has been supported by other authors who contend that local legitimacy, and acknowledgement of context specific norms, is an essential component of the rule of law and the sustainability of reform (Ghani and Lockhart, 2008; Kleinfeld, 2012; Marchiori, 2015). To account for the many ways justice is accessed in post-conflict settings, a broader definition of rule of law is necessary.

The following broadly used definition of the rule of law, first articulated by the United Nations Secretary-General in a report to the Security Council in 2004, is retained for my thesis:

"It refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency" (Report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616), para. 6).

Arajarvi (2017) in an academic analysis of the concept of rule of law within the UN determined that not all states agree with the current UN definition – arguing, there is no universally agreed understanding of the rule of law. Sannerholm (2007) agrees, suggesting that setting high ambitions with no steps on how to achieve them, as in the UN definition, leads to conflicting values, confusion, and contradictory results (Kleinfeld, 2012). Despite these limitations, I retain this definition of the rule of law as it explicitly focuses on human rights norms and standards. As well, the definition focuses on equality before the law, which specifically speaks to the experiences of vulnerable populations. The focus on human rights norms and equality before the law make for a holistic and relevant rule of law definition in accordance with the “leave no one behind” principles of the SDGs. The definition also expands on Carothers (2006) definition by not explicitly stating the mechanisms for justice. This allows space for cultural specificity and usability in many post-conflict situations where systems and concepts of justice may differ from traditional peacebuilding approaches.

Expanding on this, I turn my attention to understanding the initiatives undertaken to rebuild the rule of law in post-conflict settings. This provides insight into the ways practitioners and academics understand justice and access to justice in these settings.

There are two broad approaches to rule of law programming and state building in post-conflict environments. Top-down engagement with formal state institutions aim to assist their capacity to address post-conflict disputes and guide the transition towards the rule of law. This view generally ignores informal systems and has received extensive criticism in the literature for producing poor results (Barendrecht, 2011; Carothers, 2008; Haggard and Tiende, 2008; Johnstone, 2017; Wojkowska, 2006). Over the last decade or so, there has been an increase in bottom-up rule of law and access to justice state building which highlights the importance of

informal justice systems as avenues for accessing justice in the post-conflict environment (Johnstone, 2017; Valters, Veen and Denney, 2015).

Kleinfeld (2012), arguing that the ultimate goal of rule of law reform is to reinstate citizen's trust in the state as a forum for justice, provides an in-depth analysis of these two approaches and the interplay between them. Stating that the rule of law needs a high degree of local legitimacy to be effective, she argues that the problems with weak rule of law systems are due to the broader relationship between the state and society, rather than the characteristics of the legal bodies themselves. The bottom up approach recognizes that power and cultural norms are key components of the rule of law, with laws and constitutions enshrining cultural norms – not creating them. Kleinfeld (2012) argues that the support of these components can strengthen the rebuilding of formal laws and institutions – with the inverse also being true. She advocates for recognition of the power of these norms and inclusion of these norms, through what the citizens need and want, in reform efforts. Ghani and Lockhart (2008) also focus on the importance of legitimacy, presenting a framework for a citizen based approach to state building which focuses on a legal compact between citizen, state and market, rather than a top down imposition of the state. Advocating for local ownership over issues, rather than aid dollars, they argue that state building, with accountability to citizens as an essential component, will break the patterns of weak rule of law states. This understanding is important as it confirms local buy-in as being an essential component of access to justice in the post-conflict environment while also confirming the necessity of strong and trustworthy formal institutions (O'Connor, 2015). Building on the lessons learned by rule of law practitioners, my conceptual framework follows bottom-up trends and provides a measurement framework which respects and includes informal justice

mechanisms. The framework also seeks to measure the aspects of formal institutions which will increase their legitimacy and trust for local populations.

In addition to the relationship between the rule of law and access to justice, the rule of law is also linked to human rights. Vapnek, Boaz and Turku (2016) argue that the rule of law serves as a mechanism for turning the principles of human rights into reality; states cannot protect human rights without functioning justice systems. This is corroborated by a 2014 *Report of the Secretary-General on strengthening and coordinating United Nations rule of law activities* which further adds that the two concepts are in accordance with the same principle – the freedom to live in dignity.

2.1.3 Access to Justice and Human Rights

As my theoretical orientation is towards universal norms and the ambitious aspiration of human rights for all, I now provide a background of how access to justice and human rights relate and are conceptualized by the international community. Access to justice is often linked to human rights and is, in fact, a right entrenched in international human rights law (Kovacs, 2015). Access to justice is enshrined in the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social, and Cultural Rights*, as well as in Articles 8 and 10 of the *Universal Declaration of Human Rights (UDHR)*. The UDHR is not legally binding and has faced criticism for its perceived lack of cross-cultural validity (Ignatieff, 2001). Irrespective of these characteristics, the UDHR currently remains the primary source of codified universal human rights standards and norms (Hannum, 1998). The inclusion of access to justice in the document suggests that the concept is a universally accepted human right.

The Special Rapporteur on the Independence of Judges and Lawyers, in his report to the United Nations Human Rights Council, attempted to explain the “complex fabric of rights related to access to justice” as articulated by the major international human rights instruments:

“The legal complexity and richness of the concept of access to justice lies in the fact that it is both a right in itself and the means of restoring the exercise of rights that have been disregarded or violated. As an indispensable component of specific rights such as the right to liberty and to personal safety, it is closely linked to the right to effective judicial protection (fair trial or due process), the right to an effective remedy and the right to equality” (Despouy, 2008, pg 7).

Highlighting the synergy and interaction between access to justice and human rights, Despouy (2008) confirms the natural relationship between the two concepts. In the same spirit, with regard to measurement, Curran and Noone (2009) also explicitly link access to justice and human rights. Focusing on measuring people’s experience of justice systems by utilizing human rights instruments as benchmarks for measuring access to justice, their research found that access to justice could feasibly be measured against human rights standards.

Having reviewed the relationships between access to justice, the rule of law, and human rights, I turn my attention to definitions of justice and, more specifically, access to justice.

2.1.4 Defining Justice

Before considering access to justice it is important to establish a working definition of the concept of justice.

Deutsch (2014) argues that the relationship between conflict and justice is bidirectional with injustice breeding conflict and destructive conflict perpetuating injustice. He further identifies perceived injustice as a frequent source of conflict; if the process or outcomes of a

conflict are perceived by the parties as unjust the potential for further conflict increases. Deutsch (2014) states that unfair procedures in resolving conflict undermine public confidence in the institutions tasked with conflict resolution and the provision of justice. This trust can further deteriorate if individuals do not have the opportunity to voice their concerns or if their universal human rights are not respected (Deutsch, 2014). Deutsch (2014) shares the individual responses possible if there is a feeling of injustice in conflict resolution processes. These include: anger, aggression, rebellion, sabotage, and/or assertive attempts to remove the injustice. This is supported by Picard, Sargent, Bishop and Ramkey (2015) who agree that perceptions of injustice fuel conflict which can then lead to intractability. Coleman (2000) discusses structural variables of intractable conflict and cites the effects as being: protracted trauma, normalization of hostility and violence, and persistence.

These authors agree that injustice has the potential to fuel sustained conflict. This particularly impacts access to justice as, with less trust in justice systems and the additional strain on the systems due to conflict, people are less likely to access justice institutions. This allows injustice and conflict to perpetuate. Although the link between injustice and perpetuated conflict is established, the literature demonstrates there is no unified way to define the concepts.

Multiple definitions of justice and injustice have been proposed over the centuries. Deutsch (2014), in research summarizing the scholarly literature, identifies six sources of injustice:

- Distributive injustice- often described in the literature as “an unfair piece of the pie”, this aspect focuses on feeling as though an unfair outcome was received. There are three principles which are argued to rectify this type of injustice: equity (people who contribute more should receive more than those who contribute less), equality (all members of a

group benefit equally), and the need principle (those most in need should receive more of a benefit).

- Procedural injustice- concerned with the process and, in particular, unfair treatment in making decisions that determine the outcome
- The sense of injustice- as experienced by the justice system user
- Retributive and reparative injustice- focused on a lack of repairing the violation of moral norms and the moral community
- Moral exclusion- concerned with certain populations not being entitled to fair outcomes and fair treatment.
- Cultural imperialism- concerned with a dominant group imposing its values, norms and customs on subordinated groups.

Justice is generally accepted as the absence of injustice (Heinze, 2012; Simon, 1995) and attempts to conceptualize justice should account for the six dimensions of injustice identified by Deutsch (2014). Picard et al. (2015) share four aspects of justice which coincide with Deutsch's (2014) argument. These are: retribution (punishment); correction (restitution); distribution (fairness) and, restoration (reconciliation). In an exploration of peacebuilding and justice in post-conflict El Salvador, Haiti, Namibia, Mozambique, Cambodia, Rwanda, South Africa, and Guatemala, Mani (2002) provides three characteristics of justice. These include: rectificatory justice (rectifying the injustices that are direct consequences of conflict- in post-conflict settings this is commonly referred to as transitional justice (Simic, 2016; Williams, Nagy, and Elster, 2012); legal justice (addressing legal injustices, such as corruption and lack of access), and distributive justice (concerned with rectifying the structural, systematic and distributive inequalities and injustices that often perpetuate and incite conflict).

These definitions demonstrate the challenges with defining justice in a unified and comprehensive way. Justice is particularly challenging to define in a post-conflict environment as the concept touches on a diverse range of issues which are commonly intertwined with the peacebuilding agenda (Mani, 2005). Justice may also be conceptualized in differing ways among different cultures (Baker and Scheye, 2009; Johnstone, 2017; Kelly, 2005; St. Germain and Dewey, 2013). Aside from these challenges, Deutsch's (2014) work synthesizes existing scholarly literature and provides a comprehensive and inclusive map for conceptualizing justice. For these reasons, I conceptualize justice as the absence of the six categories of injustice identified by Deutsch (2014).

The preceding review identifies the key themes of access to justice as constructed by the literature. This understanding supports the development of elements to include in my conceptual measurement framework. Now I turn my attention to the various ways justice is accessed, the challenges with defining this access, and the barriers to access – including those specific to post-conflict environments.

2.1.5 Defining Access to Justice

Access to justice is a complex and multifaceted concept which has been understood in different ways over the course of time. As the field continues to evolve, access to justice has yet to be defined in a precise and operational definition. Exploring this, Bedner and Vel (2010), provide an overview of the history and evolution of access to justice definitions. They argue that, prior to the 1970's, the majority of access to justice definitions focused on state courts and legal aid as the essential components of achieving justice. As time began to highlight the importance of justice processes and outcomes, the seminal work of Garth and Cappelletti (1978) expanded on these early definitions. They argue,

“access to justice serves to focus on two basic purposes of the legal system – the system by which people may vindicate their rights and/or resolve their disputes under the general auspices of the state. First, the system must be equally accessible to all, and second, it must lead to results that are individually and socially just.” (pg. 6).

The definition’s focus on equal accessibility touches on recognition of the many barriers which may lead to unequal access to justice. It also pinpoints the fact that inequality exists for different groups as they seek to access justice – an observation which has been verified by more recent research (Bloch, 2010; Davis, Kingsbury and Merry, 2012; Glaser, Scheinkman and Shiefer, 2003; Luccaro, 2016; Tat and Bagshaw, 2014). This definition emphasizes the importance of quality of outcomes during the justice process which has been validated by more recent research to be a key component of access to justice (Klaming and Giesen, 2008; Verdonschot, Barendrecht, Klaming and Kamminga, 2008). Despite its positive attributes, Garth and Cappelletti’s (1978) conceptualization remains strictly focused on the role of the state as the provider of justice. Definitions of this nature do not adequately represent the diverse ways justice is achieved in post-conflict situations – particularly, they discount the essential and significant role informal justice systems may provide in these contexts. More recent definitions have taken an increasingly broad focus. For example, Bedner and Vel (2010) advocate for a comprehensive and detailed definition of access to justice. They argue that,

“access to justice exists if: people, notably poor and disadvantaged, suffering from injustices, have the ability to make their grievances be listened to and to obtain proper treatment of their grievances by state or non-state institutions leading to redress of those injustices on the basis of rules or principles of state law, religious law, or customary law, in accordance with the rule of law” (pg.7).

This definition, notably, captures the experiences of poor and disadvantaged groups who traditionally face more barriers to accessing justice (Glaser, Scheinkman and Shleifer, 2003). As with Garth and Cappelletti (1978) the quality of outcomes is considered a key component of access to justice. This definition also recognizes the many ways that justice is achieved. It is particularly relevant to the post-conflict environment due to its explicit inclusion of religious and customary laws. In light of these positives, this definition remains problematic due to its premise that justice must be achieved in accordance with the rule of law. Seeking to achieve outcomes “in accordance with the rule of law” is ambiguous as the rule of law concept itself has yet to be conceptualized in a sufficiently precise manner.

What is not explicit in the above definitions is the connection between access to justice and human rights. Recognizing that access to justice and human rights are intrinsically linked, it is more reasonable to adopt a definition of access to justice which reflects this relationship. This is of particular relevance in post-conflict settings where legal structures and institutions are evolving and there is the opportunity for justice reform in accordance with human rights standards and universal norms. For these reasons, the definition of access to justice that I adopt is: “the ability of people to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards”. This definition, originally proposed by UNDP (2005), is generally accepted both within the literature and among practitioners (Purkey, 2013; Zunino, 2014). Being highly relevant to the post-conflict environment due to the recognition of informal institutions of justice, the focus on human rights standards makes this definition unique and particularly useful. Respect for human rights are an essential component of the SDGs. As this research intends to develop a conceptual framework for measuring access to

justice which is in accordance with SDG 16, it necessitates a definition of access to justice which reflects this relationship.

Having clarified some of the basic concepts of access to justice, I now turn my attention to the barriers that individuals face in accessing justice. This overview serves to triangulate the key themes of access to justice defined by the subject matter experts I consulted. This provides an in-depth understanding of the concept which allows me to formalize the particular components of access to justice into my proposed conceptual measurement framework.

2.2 Barriers to access to justice

Existing research focuses on differential access to justice by various groups and segments of the population, the presence of discrimination in access to justice mechanisms, and the many obstacles encountered by individuals and groups in accessing justice mechanisms. The literature identifies the following main obstacles which commonly overlap: (Baker and Scheye, 2009; Bloch, A, 2010; Marchiori, 2015; McKay 2015; O'Connor, 2015; St. Germain and Dewey, 2013; Vapnek, Boaz and Turku, 2016;).

- poor knowledge of the law and one's rights;
- affordability (or costs of access to justice transactions);
- geographical proximity of justice mechanisms (mechanisms must be realistically physically accessible);
- language accessibility (justice proceedings and legal information must be available in the language of those who are seeking access);
- the availability of legal assistance;
- poverty;
- lack of trust;

- corruption
- fear; intimidation; and discrimination.

The literature shows that these barriers are consistent across countries (see American Bar Association, 2012; Action Committee on Access to Justice in Civil and Family Matters, 2013; Attorney General's Department of Australia, 2009). While all of these barriers are relevant to post-conflict settings as operationalized for this thesis, the specific characteristics of the post-conflict environment amplify the barriers common to all settings (Sannerholm, 2007; Vapnek, Boaz, and Turku, 2016).

In addition to the obstacles above, the literature reveals that post-conflict environments are characterized by criminal and civil offending occurring at higher rates in comparison with conflict free states. In an analysis of UN peacekeeping missions, Pouligny (2003) argues the importance of addressing this increased offending -- as impunity is often at the root of insecurity. The literature also demonstrates that additional specific areas of legal need for post-conflict settings include: land (property), housing, and water rights. Understanding and including the unique violations occurring in post-conflict states allows my conceptual measurement framework to be relevant to post-conflict environments.

2.2.1 Land and water violations

Highlighting violations of land rights in post-conflict settings, Van der Auweraet (2013) explains that the manner in which land disputes are addressed can potentially enhance or undermine peacebuilding efforts in post-conflict situations. For example, before taking an institutional approach to resolving land claims disputes, it is important to understand the views of the local people regarding property ownership. Along these lines, Robbins and Anyamba (2013) conducted interviews in Kibagare, Nairobi, Kenya, and documented the challenges associated

with ownership of property in post-conflict environments – generally addressed by formal legal claims or claims based on informal practices of the popular sector (eg. squatting). As jurisdiction over land rights may be contested between numerous agencies in a post-conflict setting, asserting legal rights in this regard may be very challenging (Sannerholm, 2007). This is supported by Joireman and Yoder (2016) who conducted fieldwork in Uganda, Liberia, and Timor-Leste to explore customary claims to land. They determine that the mass displacement associated with conflict is particularly challenging in rural areas where the dominant form of land holding is customary. In particular, the nature of property restitution claims people make on customary tenure systems are not in accordance with international legal norms (McMichael, 2016). As a possible solution to the increased grievances of water, land and housing in post-conflict situations, Sannerholm (2007) argues that rule of law reform should not only focus on human rights, but also on economic, social and cultural rights. He argues that the failure to do so may severely negatively impact other state building reforms. Adopting a critical criminology perspective, Balint, Lasslett and Macdonald (2017), confirm the high levels of forced evictions, land grabbing and corruption in post-conflict states and argues for a response which seeks to understanding inequality and injustice as the drivers of structural violence. They also highlight the fact that there is limited information on the specific types of crime that occur in post-conflict environments. In order to address this, these crimes receive particular attention in my conceptual measurement framework.

2.2.2 Gender equality

Gender equality is an additional area of attention for post-conflict settings. According to the 2016 UN Women report, *Improving Women's Access to Justice*, addressing the many obstacles that women face in accessing justice is, “an essential component of reducing gender-

based violence and discrimination which impede both security and development, and hinder women's full participation in post-conflict reconstruction and peacebuilding" (pg. 8). Despite this acknowledgement, the literature demonstrates that women remain marginalized, universally, but particularly in post-conflict environments, as they seek access to justice (see Bachelet, 2012; Davis and True, 2017; O'Connell, 2011). This has also been recognized by practitioners. The Committee for the Elimination of All Forms of Discrimination against Women (CEDAW) is a body of 23 independent experts on women's rights from around the globe. Tasked with monitoring the implementation of the Convention on the Elimination of All Forms of Discrimination against Women, their commonly cited 2015 report, *General Recommendation on Women's Access to Justice*, clearly outlines the specific challenges that women face in accessing justice. Access to justice, from the Committee's perspective, is conceptualized along the key themes of: justiciability (unhindered access to justice along with an ability to claim rights as legal entitlements); availability (presence of justice mechanisms in both urban and rural settings); accessibility (financial and physical accessibility); good-quality (based on adherence to international standards), accountability of justice systems, and provision of remedies for victims. The report argues that barriers against women:

“occur in a structural context of discrimination and inequality due to factors such as gender stereotyping, discriminatory laws, intersecting or compounded discrimination, procedural and evidentiary requirements and practices, and a failure to systematically ensure that judicial mechanisms are physically, economically, socially, and culturally accessible to all women” (Committee for the Elimination of All Forms of Discrimination against Women, pg. 3).

This observation that discriminatory laws and stigma amplify other challenges, such as accessibility and quality that are faced by both men and women is further corroborated in the research (Brinks, 2008; Lambourne and Carreon, 2016; UNDP, 2005; Walsh and Menjivar, 2016).

The majority of the research on women seeking access to justice in post-conflict environments focuses on Afghanistan. While understanding how women seek justice in post-conflict environments would benefit from a larger body of literature in broad settings, a focus on Afghanistan highlights the challenges with attempting to access justice under the structures of discrimination discussed by CEDAW (2015). In 2012-2013, the US Agency for International Development's Office for Democracy and Governance and the US Department of State's Bureau for International Narcotics and Law Enforcement funded an exploration of rights violations and disputes in 5 Afghani provinces. The most common disputes cited included: divorce and child custody; forced marriage; domestic abuse; "running away", adultery, and "moral crimes"; inheritance; rape and sexual assault. These themes are supported by the results of a study which collected data via in-depth interviews with users and actors of the justice systems (Open Society Institute and Soros Foundations Network, 2008). Interviewing 450 males and 900 females, the study found adultery and running away as the most common crimes that study participants were accused of. The authors of the 2012-2013 report, Luccaro and Gaston (2014) state that women generally underreported offences against their rights due to stigma, lack of understanding legal definitions, and fear of being further victimized through the formal justice system. The Open Society Institute and Soros Foundations Network study determined that barriers within the formal systems included the lack of efficiency, accountability, gender equality, and performance of justice institutions. Informal barriers were cited as being traditional gender bias and cultural

norms. Jensen (2011), argues that factors, including low education, mistrust of state systems, and geographic barriers contribute to a deterrence away from formal systems and towards the more familiar informal mechanisms, which may not be in accordance with international human right standards.

In post-conflict settings, the literature demonstrates how these common barriers influence the pathway to justice that an individual seeking redress takes; in particular, the choice between formal or informal justice mechanisms. In conceptualizing formal and informal justice mechanisms in post-conflict environments, Luccaro (2016) provides the useful term of: “legal landscape”. Legal landscape is used,

“to define all the available institutions or forums for redress than an individual or group may access and use to pursue his or her grievance or injury. This landscape includes institutions and forums that could be described as customary justice, or as statutory law, or as some combination of the two. Individuals often choose to seek assistance or redress within the forum that they think will best suit their individual interests or needs” (pg. 10).

Informal justice mechanisms are defined as unwritten or oral traditions connected to the broader social, cultural, and economic organization of the community and representing the normative framework of a community (Luccaro, 2016). To fully understand the ways that access to justice is experienced in post-conflict settings, I now explore informal justice mechanisms. This information provides insight on how to understand, and formalize into my framework, aspects of access to justice which account for all relevant justice options in post-conflict settings.

2.2.3 Formal vs. informal justice

Although the value of informal justice systems is debated in the literature, consensus has been reached that these systems make up an essential component of the post-conflict reality. Positive characteristics of informal mechanisms include: a holistic approach to law; the unity of law (between civil and criminal justice); geographical availability (informal justice may be the only option if there are no state mechanisms in a rural area); cost (generally free); speed of justice; the perception as being less prone to corruption; operation by trusted community members; use of the local language; a focus on social harmony rather than enforcement of legislation and, perception of legitimacy (Jackson, 2011; Luccaro, 2016; Tat and Bagshaw, 2014). These are relevant when looking at access to justice as these characteristics provide resolutions for the barriers with accessing the formal systems. Conversely, informal justice mechanisms also have many flaws to consider. In some cases, challenges with the justice achieved at this level may have contributed to the conflict (Jackson, 2011). Maintaining them can generate parallel structures and/or contribute to the perpetuation and intractability of conflict. Informal systems also may be controlled by local elites, religious leaders, or the dominant social group which may increase power imbalances with the state and lessen the likelihood that women and vulnerable groups receive fair and impartial justice through these mechanisms (Baker and Scheye, 2009; Chopra and Isser, 2012; Glaser, Scheinkman and Shleifer, 2003; Luccaro, 2016; Marc, 2012).

In order to balance the strengths and limitations with informal systems and increase access to justice, recommendations have been made to link informal and formal institutions (Baker, 2010; Jackson, 2011; Roder, 2013). An example from post-conflict Liberia argues that, in practice, this approach is one of the most challenging tasks in rebuilding the justice sector –

due largely to tensions arising from the international community's pressure to focus on formal justice in its peacebuilding efforts (Divon and Boas, 2017). These conversations, while valuable, are based on the assumption that the informal justice systems remain intact, available, and accessible after the conflict. The literature on the impact of conflict on informal justice systems is lacking. I was unable to find any articles which discussed this focus area. With that being said, an overview of post-conflict characteristics – such as displacement or migration of populations, breakdown of structures, and general instability presented in section 2.1.1, can lead one to logically suspect that informal systems existing before the conflict may no longer exist or be operational within the immediate post-conflict period. Particularly, if the leader of the informal justice system was a prominent chief or community member, the likelihood that they would have fled the region during the conflict may be possible. In addition, in some post-conflict situations, informal justice mechanisms may have completely disappeared or never have played an important role.

The recognition that informal justice systems are an important part of the justice landscape in post-conflict settings coupled with the lack of demonstrated consensus on how to build links between the formal and informal systems, and the possibility that these systems may simply not ever have existed or survived the conflict, necessitate that informal and formal justice systems stay distinct in my conceptual framework. This allows my framework to be adaptable and tailored to the needs of the local context.

Now that key concepts have been operationalized, access to justice has been conceptualized and barriers to access to justice have been identified, I turn my attention in the literature to the measurement of access to justice in order to explore secondary research question

2: How is access to justice currently being measured at the national and international levels and what are the issues and obstacles typically encountered in measuring it?

The complexity of access to justice creates challenges for measurement; access to justice cannot be simply broken down into one or two targets as it encompasses many dimensions. The unique characteristics of post-conflict environments not only create additional barriers to access to justice, but also barriers to measuring access to justice. In this section I explore how access to justice is measured, as well as the challenges and capacity limitations in measuring it in post-conflict environments. Having a deeper understanding of these factors allows me to develop a conceptual framework that is logical and feasible for post-conflict settings.

2.2.4 Capacity of Post-conflict states to measure access to justice

Local participation, consultation and ownership in justice and security sector reform is generally seen as essential in maintaining sustainability (see, for example: Barendrecht, 2011; de Coning and Romita, 2009; Hammergreen, 2011; Oosterveld and Galand, 2012; Whaites, 2016). This suggests that a monitoring process which is linked to real decision making capacities is much more likely to achieve buy-in than a process created and implemented by a third party, although there may still be challenges with objectivity and capacity for NSOs in post-conflict situations. For example, if the government was involved in the violence and conflict there will be minimal perceived objectivity for indicators developed by the state (Institute for Economics and Peace, 2016).

Accountability for the SDGs is based on data collected at the local (national) level. In research interviewing government stakeholders on the potential impact of the SDGs, it is argued that the focus on the national level essentially dilutes the accountability mechanism of the Global Goals (Fourie and O'Manique, 2016). Recognizing the importance of accountability on effective

development goals, Pogge and Segupta (2015) and Engebretsen, Heggen, and Ottersen (2017), elaborate, stating that the voluntary accountability of the SDGs minimizes their relevance as a tool for transformative change. Winkler and Williams (2017) offer a possible solution: as nationally owned indicators and monitoring frameworks are developed to measure progress towards the goals, space and opportunities remain to ensure that these reflect human rights standards. The challenge exists that, even if appropriate national monitoring frameworks for measuring access to justice are established, post-conflict settings are limited in their capacity to gather data. In order to understand this and provide context for my conceptual framework, I now explore the dynamics of the capacity and desire for post-conflict states to measure access to justice.

Measuring access to justice is particularly problematic in post-conflict environments as many national statistics offices (NSO's), are not equipped with the resources and necessary statistical capacity to measure rule of law and access to justice (Institute for Economics and Peace, 2016). The high levels of destruction of official buildings are significantly detrimental to collecting data on justice outcomes (Strohmeyer, 2001). Sannerholm (2007) shares that the legal and administrative systems of a state are the most vulnerable to conflict. DPKO (2015) found that where administrative data did exist in post-conflict settings, the quality was generally extremely poor. In addition to the challenging characteristics of post-conflict settings, it may be precisely due to lack of local capacity to manage their own justice needs that lead to the descent into conflict (Oosterveld and Galand, 2012). This not only impacts access to justice, but also state willingness to measure access to justice.

Many post-conflict states may also have cultural biases against measurement systems. Using case studies of Afghanistan, Burundi, Chad, the Central Africa Republic, the Democratic

Republic of Congo, Haiti, and Liberia to explore monitoring during peace operations, de Coning and Romita (2009) demonstrate that, in all cases, tension between local ownership and international guidance was present. Building on this with a focus on Nigeria, Chukwuma and Ebai (2012) highlight these tensions and cultural biases determining that some countries, including Nigeria, do not see the value in making decisions and guiding policy using statistics. Morgan (2011) expands, offering an example through an analysis of using data to monitor corruption in Uganda. He determined that a significant obstacle in the monitoring process was skepticism surrounding international data sources. Varying between concerns arising from anti-western sentiment and methodological concerns, Ugandans generally believed that international data did not adequately reflect national priorities. This remains problematic as local ownership, in general, is seen as being essential for sustainable justice and security sector reform (de Coning and Romita, 2009; Hammergreen, 2011; Oosterveld and Galand, 2012). This information highlights the challenges with using international data sources and also the limited capacity of NSOs to collect reliable administrative data. In looking toward the most promising way to measure access to justice in post-conflict settings, an alternative for administrative data is perception data collected through surveys. To determine the appropriateness of including perception data in my conceptual measurement framework, I now conduct an overview of the qualities of perception data.

Perception based surveys hold value in their ability to stimulate public debate on measuring, and acting on, what is truly important for people. Surveys also increase availability of data and opportunities to measure (Rodriguez Takeuchi and Hine, 2015). Assessing the relevance of perception data to the 2030 Agenda and SDG 16, highlights possible challenges with these data sources. These include the (possibly state-controlled) media's influence on

perceptions and the ability of surveys to capture the experiences of hard to reach vulnerable groups (Herrera, Razafindrakoto and Roubaud, 2007; Rodriguez Takeuchi and Hine, 2015). The use of surveys to collect data may also present challenges due to linguistic and cultural differences or sensitive issues (Saferworld, 2013). For example, sexual and domestic violence victimization are not readily captured through surveys due to the socio-cultural pressure not to report – with non-response being likely to go up in these situations (Rodriguez Takeuchi and Hine, 2015). Additionally, subjective measures are generally prone to concerns of validity or bias (Ginsburg, 2011; Whaites, 2016). Ginsburg (2011), highlights the challenges with giving voice to inaccurate perceptions. For example, a country which has many citizens who are quick to criticize the government may report levels of corruption to be higher than they actually are. This has the negative consequence of weakening trust in institutions for citizens who initially had trust in the mechanism. Another aspect skewing the reliability of perception data, particularly relevant to post-conflict situations, is adaption or habituation (Rodriguez Takeuchi and Hine, 2015). This refers to the normalizing of one's living conditions and the subsequent diminished psychological or emotional response. Women in post-conflict Afghanistan, for example, may have internally normalized inequality between the genders and may be less likely to consider violations of international norms pertaining to gender “injustice”.

Analyzing gaps between perceptions and objective indicators is argued to pinpoint where people are dissatisfied or where there are implementation gaps in policies targeting the areas of SDG 16 (Rodriguez Takeuchi and Hine, 2015). The American Bar Association (2012) recommends the ideal situation as one which uses both objective and perceptive data sources to measure the quality and local legitimacy of justice mechanisms.

In order to further understand how access to justice is being measured, I now provide a systematic overview of existing measurement tools. The purpose is to highlight the different ways access to justice has been constructed and provide insight into current measurement practices which can be incorporated into my conceptual framework.

2.3 An Overview of Existing Tools and Frameworks to Measure Access to Justice

The SDGS provide an international framework, applicable to all states, for measuring access to justice under SDG 16.3. Currently, the only instrument specifically designed to measure the rule of law and access to justice in post-conflict settings is the United Nations Rule of Law Indicators (ROLI). Measurement frameworks also exist to measure characteristics of justice systems as part of a larger peacebuilding agenda. Additionally, some researchers have developed measurement frameworks for specific aspects of access to justice, such as user experience. A significant limitation of these frameworks is that, with the exception of the SDGS, the literature pertaining to them is minimal and/or restricted to the organization which has produced the tool. An analysis of the existing literature demonstrates that, to date, there remains limited academic literature on the effectiveness of the tools. Nevertheless, their value remains in providing insight into the various dimensions of access to justice practitioners have identified as being relevant to measure. This understanding strengthens the categories of access to justice comprising my conceptual framework. Tools discussed include: The SDG Framework; the ROLI; the United Nations Human Rights Indicators; The World Justice Project Rule of Law Index; The Fragility Spectrum; Access to Justice BC; The American Bar Association Access to Justice Assessment Tool (AJAT); Governance, Peace and Security (GPS), and the Strategic Harmonization of Statistics in Africa (SHaSA). The contributions of Barendrecht (2010) and Marchiori (2015) are also discussed. After these tools are presented I analyze the dynamics of

indicators to understand the discussed tools and propose options for my own conceptual measurement framework.

2.3.1 The Sustainable Development Goals

In 2015, after three years of broad stakeholder negotiations, the global community adopted the SDGs. The 17 SDGs are goals under the broad umbrella of the 2030 Agenda for Sustainable Development which seeks to eradicate poverty by the year 2030. The SDGs follow the Millennium Development Goals (MDGs) which were active from the years 2000-2015. Being only the second global framework adopted by the international community, the SDGs, in both process and desired outcomes, were shaped by the MDG experience – particularly concerning the relationships between peace, justice, governance, and development, the inclusion of all social groups, and the challenges with empirically measuring progress.

The 2030 Agenda and the SDGs are the only existing measurement framework for which a body of academic literature exists. Due to the recent adoption of the SDGs, little academic literature exists on the actual effectiveness of the goals. The current literature generally compares the SDGs to the MDGs or critiques the SDGs. An overview of this literature helps situate my conceptual framework into the broader 2030 Agenda. It also assists in understanding the measurement experiences of the MDGs and SDGs which can inform my own framework.

The MDGs were the first global development framework and were active from the years 2000-2015. The MDG experience included the observation of highly unequal national progress towards the goals, with conflict-affected countries achieving significantly less progress than other developing countries (Mironenko, Lucas, Tarasova, and Zlinszky, 2015). The MDGs were also criticized for their lack of focus on universal human rights (Nanda, 2016; Winkler and Williams, 2017) and for portraying development as a narrow technical process of poverty

alleviation (Harcourt, 2005; Fourie and O'Manique, 2017; Mironenko, Lucas, Tarasova, and Zlinszky, 2015; Pogge and Sengupta, 2015). The SDGs acknowledge the impact of conflict and development and, in contrast with the MDGs, a stand-alone governance goal- SDG 16 was adopted.

An overview of the literature on the implementation of the MDGs shows that the lessons learned during the monitoring of the progress towards the realization of the MDGs actually informed the development of a measurement framework for the SDGs. Both the MDGs and the SDGs provide targets, which represent distinct areas of progress, as well as indicators, or specific measures, to assess progress towards the targets. Global and regional progress towards the realization of the MDGs was assessed by the Inter Agency Expert Group- MDG (IAEG-MDG) which consisted of international agencies, regional organization and national statistical offices. Indicator and target selection was a top-down initiative and, according to a 2013 United Nations report, *Lessons Learned from MDG Monitoring from a Statistical Perspective*, the failure to consult with countries on targets and indicators was a primary cause of numerous inconsistencies and inadequacies with data collection. Additionally, many developing countries felt burdened and unsupported by developed countries in the efforts needed to meet the MDGs (Donald and Way, 2016). Learning from this, the 2030 Agenda makes numerous commitments to the principle of national ownership in direct contrast to the *Millennium Declaration* where this was not expressed. The literature demonstrates that this language of national ownership and accountability for the SDGs presents some tensions. Particularly for post-conflict states, the lack of capacity of local NSOs may prevent measuring towards these goals. Using the example of the African Union's (AU) Agenda 2063 an article by Mulligan (2015) highlights the challenges with committing to a global framework which may contradict an existing national agenda. In this

example it is argued that the SDGs are relevant only in the context that they support the AU Agenda. Stewart (2015) expands this point arguing that targets and indicators determined at the global level are unable to account for the unique characteristics and national priorities of individual countries. A remedy offered is for more context-specific and relevant national goals and indicators to be developed – particularly for the very broad target SDG 16.3 which focuses on access to justice.

Table 1: Sustainable Development Goal 16 and related targets

SDG 16: Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels

16.1 Significantly reduce all forms of violence and related death rates everywhere

16.2 End abuse, exploitation, trafficking and all forms of violence against and torture of children

16.3 Promote the rule of law at the national and international levels and ensure equal access to justice for all

16.4 By 2030, significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime

16.5 Substantially reduce corruption and bribery in all their forms

16.6 Develop effective, accountable and transparent institutions at all levels

16.7 Ensure responsive, inclusive, participatory and representative decision making at all levels

16.8 Broaden and strengthen the participation of developing countries in the institutions of global governance

16.9 By 2030 provide legal identity for all, including birth registration

16.10 Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements
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Access to justice is officially captured under SDG 16 as the target SDG 16.3, “promote the rule of law at the national and international levels and ensure equal access to justice for all” (2030 Agenda). The agreed upon global measurement framework includes two indicators to measure progress towards this target.

- Indicator 16.3.1- the proportion of victims of violence in the previous twelve months who reported their victimization to competent authorities or other officially recognized conflict resolution mechanisms.
- Indicator 16.3.2 -unsentenced detainees as a proportion of overall prison population.

The adoption of these two indicators to measure progress illustrates the complexity involved in attempting to express the rule of law and access to justice into simple variables. These indicators alone offer a narrow view of criminal justice and do not account for the many diverse and varied ways that people access justice. Highlighting this, a 2016 expert meeting between the UNDP and the Peace Research Institute of Oslo (PRIO) suggested that the 2 global indicators for 16.3, with their focus on prisons and violent victimization, are actually proxy measures of security service capacity and their relevance to the rule of law and access to justice are restricted. When taken into consideration with the other targets for SDG 16 a clearer picture of access to justice emerges. The reduction of corruption (target 16.5) has been demonstrated to increase access to justice (see De Lauri, 2013 for an example from post-conflict Afghanistan). Accountable institutions (target 16.6) increase access to justice, including in post-conflict environments, (O’Connor, 2015) and participatory and representative decision making (target

16.7) has been shown to strengthen post-conflict reconstruction efforts (see Diop, 2013 for a study on the impact of women in business in post-conflict situations).

In 2016, a significant meeting between UNDP's Oslo Governance Center (OGC) and the Peace Research Institute Oslo (PRIO) was held and attended by 78 representatives from NSOs, governments, multilateral agencies, research and policy institutions, and civil society organizations. According to the final report of this meeting there was considerable support for a dispute indicator for SDG 16.3 proposed as: "the proportion of those who have experienced a dispute in the past twelve months who have accessed a formal, informal, alternative, or traditional dispute resolution mechanism and who feel it was just" (UNDP-OGC and PRIO, 2016). This proposed indicator takes a much broader view of the mechanisms for justice and accounts for the various legal traditions of diverse states, including in post-conflict situations. Additionally, it provides information on satisfaction levels and perceived fairness. The reasons for not adopting this particular indicator do not appear to have been documented.

2.3.2 The United Nations Rule of Law Indicators (ROLI)

The only instrument specifically designed to measure the rule of law and access to justice in post-conflict settings, the United Nations Rule of Law Indicators (ROLI) officially launched in July, 2011 (United Nations, 2011). The instrument has been tested and implemented in Afghanistan, Haiti, Liberia, and South Sudan.

135 indicators are clustered under three institutions- the police, judicial systems, and prisons. The ROLI are designed to measure four major dimensions of each cluster of criminal justice institutions: performance; integrity, transparency and accountability; treatment of members of vulnerable groups; and capacity. The structure of the ROLI around four broad and essential dimensions of the rule of law is cited as one of its greatest strengths (DPKO, 2015).

The majority of the indicators are focused on outcomes and long-term impact. Unlike other instruments, the ROLI does not specify targets to be achieved in relation to the various key dimensions and components it measures. The indicators are primarily designed to measure change over time. Disaggregation of data collected to highlight the experiences of vulnerable groups and women is not explicitly stated. Rather, the ROLI incorporates measuring the experiences of these populations throughout the application of the tool and clearly identifies fair treatment of vulnerable groups as an essential component of the rule of law by providing indicators on this focus.

According to the 2011, *United Nations Rule of Law Indicators: Implementation Guide and Tools* (United Nations, 2011), a key strength of the tool is reliance on diverse data sources which include: information from public and expert surveys; administrative data; document review; and field observations. These varied sources are particularly feasible for post-conflict environments which generally lack existing data or capacity to gather data. In addition, the combination of data sources works together to paint a holistic picture of the functioning of justice systems in the state. The ROLI uses “baskets” of indicators which bundle conceptually related indicators to create a more holistic picture of what is being measure. This aggregation of indicators into baskets is seen as a way to reduce bias and increase reliability (Parsons, Gokey and Thornton, 2013).

United Nations literature cites the instrument as being valuable and relevant for post-conflict settings (DPKO, 2015), however, it is recognized that major limitations include cost of implementation and the lack of focus on informal justice mechanisms which are stated as being “crucial” in a conflict-affected setting (Dandurand, 2015, pg. 6). An additional limitation is the potential fiscal cost of gathering data from multiple sources (Parsons and Thornton, 2012). To

date, no independent academic literature exists evaluating the instrument aside from an exploration of justice indicators conducted by Parsons, Kutateladze, Thorton, Bang, and Yaya (2010) for the United Nations Rule of Law Indicators Project. This article confirmed the importance of informal justice mechanisms in post-conflict environments. Despite the official recognition and advocacy by the tool that this aspect of justice is lacking, there is no explanation given as to why informal justice systems were not included.

Dandurand (2016) assessed the experience with implementing the ROLI in several countries and emphasized the need to assist national authorities in developing relevant, nationally owned processes for gathering and reporting locally owned administrative data on the rule of law.

2.3.3 The United Nations Human Rights Indicators

In 2012 the Office of the United Nations High Commissioner for Human Rights (OHCHR) produced a guide intended to assist in the development and implementation of a variety of quantitative and qualitative human rights indicators. The guide defines human rights indicators as, “specific information on the state or condition of an object, event, activity or outcome that can be related to human rights norms and standards; that addresses and reflects human rights principles and concerns; and that can be used to assess and monitor the promotion and implementation of human rights” (OHCHR, 2012, pg. 16). Designed for use at the national level, the Human Rights Indicators provides guidance on the development of context specific and feasible indicators which demonstrate the implementation of international human rights norms and principles for civil, cultural, economic, political and social rights.

The primary sources of suggested data are (1) events based data; (2) socioeconomic and administrative stats; (3) perception and opinion surveys, and (4) expert judgements.

Administrative data is given prime importance in holding the state accountable on human rights obligations. Additionally, as the data set is generated by the state is may be more likely to be considered accurate by the state. The guide states that surveys may be resource prohibitive, although their value lies in providing validation of the accuracy of administrative reports.

Perception data are determined to be unlikely to produce valid indicators to consistently monitor human rights. Expert data are beneficial in their ease of collection, however, their reliability and data comparability are limited. The guide argues that in a conflict or post-conflict situation, where there many be systematic denial or widespread violations of human rights, events based data would likely be the main source of reliable information (OHCHR, 2012).

The Human Rights Indicators (OHCHR, 2012) recognize the necessity for contextually relevant indicators while acknowledging universally relevant indicators. To achieve this balance, the report offers a core set of human rights indicators while encouraging a deeper assessment of the attributes of the relevant human right dependent on the situation.

An emphasis exists on disaggregation by the type of discrimination and by vulnerable and marginalized population groups. The guide recognizes that disaggregation of data on the basis of the prohibited grounds of discrimination, as described by international human rights bodies, is essential in addressing human rights concerns; further acknowledgement is given to the challenges with achieving this in post-conflict environments (OHCHR, 2012). It also suggests that disaggregation on sex, age, economic status, level of education or region may be easier than on identities of religion ethnicity, which may be politically sensitive issues in a post-conflict situation.

Advocating that independence, objectivity, and transparency are fundamental aspects of collecting robust human rights information, the guide offers three main human rights principles

in relation to the data collection process. These include: self-identification regarding membership in specific vulnerable groups; participation from all sectors of the population, and data protection/privacy standards.

The OHCHR (2012) guide provides illustrations of indicators which are directly linked to access to justice. For example, there are components to measure the right to life, the right to a fair trial, and equality before the law.

2.3.4 The World Justice Project Rule of Law Index

Since 2008, the annual Rule of Law Index provides scores and country rankings based around eight factors: constraints on government powers; absence of corruption; open government; fundamental rights; order and security; regulatory enforcement; civil justice and criminal justice. A ninth factor, informal justice, is measured, but is not included in aggregated scores and rankings. The Rule of Law Index relies solely on perception data. The 2016 index was derived from more than 110,000 households and 2700 expert surveys in 113 countries and jurisdictions. A criticism of the index has been that it aggregates an abundance of individual elements into a broad overarching concept (Ginsburg, 2011). This highlights the challenges in attempting to measure complex phenomena, such as the rule of law. In general, data collected is not disaggregated on any grounds. Rather, the Rule of Law Index has an indicator (4.1) to measure equal treatment and absence of discrimination in public services, employment, court proceedings, and the justice system. This indicator focuses on socio-economic status, gender, ethnicity, religion, national origin, sexual orientation, or gender identity. Indicator 7.2 measures discrimination along these grounds within the civil justice system. The final indicator providing information on vulnerable groups is 4.5 which focuses on freedom of belief and religion.

2.3.5 The Fragility Spectrum

In 2012 the g7+ developed a qualitative tool which allows states to measure their status across various stages of fragility through a process of self-assessment, with the validation of broad stakeholder participation. The tool defines fragility as, “a period of time during nationhood when sustainable socio-economic development requires greater emphasis on complementary peacebuilding and statebuilding activities such as building inclusive political settlements, security, justice, jobs, good management of resources, and accountable and fair service delivery” (pg. 5, g7+ Fragility Spectrum Note, 2013). According to a 2012 Interim Guidance Note, *Piloting the Fragility Spectrum and identifying country-specific peacebuilding and statebuilding indicators*, the process involves: the formation of a country task force; agreement on strategy and assessment method; background research, information gathering and consultations; multi-stakeholder consultation; identification of indicators; assessment; indicator development and reporting; validation, presentation, and distribution. The Fragility Spectrum creates a matrix of five Peace and Security Goals (PSGs): legitimate politics; security; justice; economic foundations; and, revenue and services measured against five stages of resilience: crisis; rebuild/reform; transition; transformation; and resilience. Designed with the challenges of fragile states in mind, there is a strong focus on national ownership and the limited capacity to measure data. The tool provides a long list of draft indicators with the intention for national actors to identify simple and context specific indicators of fragility that can realistically be measured by the state (Grimm, Lemay-Hebert, and Nay, 2015). Piloted in five countries, Sierra Leone, the Democratic Republic of the Congo, South Sudan, Liberia, and Timor-Leste, the feedback from these experiences formed the draft list of indicators.

A focus on the experiences of vulnerable groups is evident in an analysis of the indicators proposed. For example, under PGS 1, indicators exist which measure the number of religious and ethnic conflicts that were mediated and resolved.

2.3.6 Access to Justice BC

The Access to Justice BC initiative is relevant in understanding the complexity of measuring access to justice in any situation, without the particular needs of the post-conflict environment.

The A2J measurement framework seeks to monitor the experience of British Columbians as they manage their everyday justice and legal needs. The measurement framework identifies, what it describes as, key dimensions of access to justice for which indicators can be developed (Farrow, Moore, and Aylwin, 2017). These key dimensions are broad and include: prevalence of legal needs/problems; response to legal needs; fair and equitable access to justice; social and economic impact of access to justice; user experience of obstacles to access to justice; quality of user experience of the justice system; effectiveness of justice system in addressing user legal problems; appropriateness of the justice process; justice outcomes for the users; per capita costs of services; per-user costs of services; and other costs. Each dimension has numerous components which, due to space restrictions, will not be listed here. Some highlights, however, include: public legal awareness; need for legal representation and other legal assistance; geographical, financial and swift access; access for vulnerable groups; protection of rights; public confidence in the justice systems and institutions; gender equality, and fairness, equity and impartiality of the process (Farrow, Moore, and Aylwin 2017).

Disaggregation of data and the experiences of vulnerable groups are explicitly stated in the framework. A unit of analysis for the tool is given populations of concern. This involves

specifying the population of concern before implementing the tool which allows for information to be captured on a broad range of relevant population groups.

2.3.7 The American Bar Association Access to Justice Assessment Tool (AJAT)

The AJAT was developed by the American Bar Association Rule of Law Initiative (ABA-ROLI), a non-profit program believing that the rule of law is essential in addressing poverty, conflict, corruption, and lack of human rights. The AJAT supports local actors to conduct research on access to justice by providing a conceptual framework for analyzing access to justice. The ultimate intention of the tool is to increase evidence based decision making and advocacy among practitioners (American Bar Association, 2012). Importantly for the post-conflict environment, the AJAT has been designed to analyze both formal and informal institutions. The AJAT recognizes the benefits and challenges, described in section 2.2.3, with informal justice systems and offers possible remedies. These include: the development of a code of ethics for informal systems; criminal justice and human rights standards training for informal justice actors; using traveling lawyers to reduce the access to justice barriers for rural populations; having grants or loans available to individuals seeking to access formal justice systems; developing mobile courts; and strengthening links between formal and informal justice mechanisms (American Bar Association, 2012). The AJAT also focuses on the experiences of vulnerable groups and advocates for particular attention to be paid to these groups as practitioners implement the tool.

The AJAT identifies six elements of access to justice

- 1.) A legal framework- to what extent is there a legal framework that establishes citizens' rights and duties and provides citizens mechanisms to solve their common justice problems?

- 2.) Legal knowledge- to what extent are citizens aware of their rights and duties?
 - a. To what extent are citizens aware of mechanisms available to solve their common justice problems?
- 3.) Advice and representation- to what extent can citizens access the legal advice and representation necessary to solve their common justice problems?
- 4.) Access to a Justice Institution- to what extent is the justice institution affordable?
 - a. To what extent is the justice institution accessible?
 - b. To what extent does the justice institution process cases in a timely manner?
- 5.) Fair Procedure- to what extent do citizens have an opportunity to effectively present their case?
 - a. To what extent are disputes resolved impartially and without improper influence?
 - b. Where disputes are resolved by mediation, to what extent can citizens make voluntary and informed decisions to settle?
- 6.) Enforceable Solution- to what extent are justice institutions able to enforce their decisions?

Although this tool appears highly useful and relevant to the post-conflict environment, there is no literature on its recent use. The only literature available from the American Bar Association are 4 reports from 2012 which discuss the application of the tool in the Philippines, Guinea, Mali, and Indonesia (American Bar Association, 2012); these reports do not discuss methodological challenges or successes and do not provide information on the feasibility of applying the tool. Rather, the reports provide context specific information on access to justice in the respective countries.

2.3.8 Governance, Peace and Security (GPS), the Strategic Harmonization of Statistics in Africa (SHaSA):

Since 2012, the GPS SHaSA has worked to develop, test and institutionalize measurement instruments for use by Africa's NSOs. The initiative is coordinated by the African Union (AU) with support and funding from the UNDP. Aligned with the African Union Charter on Democracy, Elections, and Governance, statistics are produced on the 11 principles of the Charter. These include: human rights and personal freedoms; rule of law; representative government; free and fair elections; separation of powers; gender equality; citizen participation; transparency; control of corruption; constitutional order; and political pluralism (African Union (AU) and UNDP, 2015). Governance measures include: satisfaction with democracy; contact with administration; victim of corruption, and confidence in the administration. Peace and security measures include: the perception of an armed conflict threat; victim of physical assault; existence of structures to solve conflict; and feeling of insecurity.

GPS data collected through SHaSA utilizes a survey based methodology, preferably triangulated by administrative data, if available. It is highly recommended that data is disaggregated, although the tool does not specify the level of disaggregation. The tool suggests partnering with NSOs to implement the survey. This partnership yields broad representative samples from the general population which can then be disaggregated into the characteristics of interest (AU and UNDP, 2015)

This method of data collection was piloted between 2013-2015 in Cape Verde, Cote d'Ivoire, Comeroon, Kenya, Malawi. Also in this time period, self-starter countries included Burundi, Mali, Senegal, Uganda and Tunisia. In order to share experiences, a SHaSA Stakeholders consultative meeting was held in Addis Ababa in 2015 (AU and UNDP, 2015).

The piloting experience highlighted the challenges with attempting to collect administrative data due to unavailability or poor quality. The pilot countries also reported that: nationally produced survey based GPS statistics which are comparable across countries are feasible; NSOs in transitional states are able to conduct such surveys; disaggregation of the data highlights differences in groups; multiple indicators, both perception based and experience based, strengthen the ‘full picture’; and that GPS-SHaSA survey results are methodologically robust (AU and UNDP, 2015).

A significant strength of this tool is in its focus on local ownership and the concept of “data sovereignty”. Initially advocated for by the Kenya National Bureau of Statistics (AU and UNDP, 2015), “data sovereignty” refers to an internally led data collection process and the strengthening of local NSO’s to collect data. This concept is in direct response to the observation by the Kenya National Bureau of Statistics that many countries were assessing governance in Kenya, with the exclusion of Kenya itself. Data sovereignty would likely be significant in achieving buy-in for measurement from resistant states. It may additionally reduce some of the negative perceptions around the data collected and the outcomes reported. Another strength of SHaSA is cost effectiveness due to the option of attaching the GPS module onto a regular national household survey (AU and UNDP, 2015). Even as a stand-alone survey, the tool is condensed to one or, at the most, up to four pages to reduce cost.

Regional coordination of GPS data production, use of GPS statistics by Regional Economic Communities for the prevention and management of conflict, and regional learning and sharing experiences among NSOs, including the development of additional indicators were envisioned, but have yet to be achieved. These limitations have been attributed to the costs of the initiative (AU and UNDP, 2015).

2.3.9 The Measuring Access to Justice Project- The Hague Institute for the Internationalization of Law (HiIL), Tilburg University and Universiteit Utrecht

This model of measurement focuses on “paths to justice” which describes the process of accessing justice. The lead researcher, Barendrecht (2010) explains that a person begins a path to justice “as soon as he or she takes a first action to solve a legal problem” (pg. 8). The path to justice ends when an agreement or decision is made or when one party leaves the procedure (Barendrecht, 2010). Barrier to access to justice are conceptualized and measured as the transactions costs, including monetary costs, opportunity costs, and intangible costs (such as time, stress, and negative emotions) that an individual occurs while on the path. Barendrecht (2010) proposes a measurement framework which measures justice through the perspective of justice users and focuses on these costs as well as the quality of justice users experience with both the process and the outcome. The framework is designed to measure user’s perspectives on both formal and informal paths to justice as well as criminal and civil justice issues. As the focus is on user perception, it would be possible to specify the population groups of interest while applying this tool.

Data is collected for the framework by conducting a survey, asking users to keep a diary of experiences, or holding focus group interviews. Sample sizes are recommended to be between 50-70 and can be used to explore a specific legal problem or an entire legal system (Barendrecht, 2010). After analysis all indicators are summarized into one final score – the *Access to Justice Index* which purports to give an overall picture of the satisfaction of users with the justice process.

Numerous reports have been produced by the researchers which highlight the development of the framework and the limitations of the methodology. Limitations of the

methodology include the focus on perception data which may not reflect outcomes which are legally just; it does not measure the barriers to bringing an issue to a path to justice, and it is only relevant to generally standardized paths to justice.

2.3.10 The work of Marchiori (2015)

In a report prepared for UN Women and the Council of Women, Teresa Marchiori reviewed and mapped out a sampling of measurement tools and data collection initiatives in order to develop a set of indicators to assess the degree to which justice systems are accessible to all (Marchiori, 2015). She paid special attention to the access to justice barriers faced by women. Indicators of access to justice are usually grouped around themes that correspond to key components of access to justice. For Marchiori (2015), these themes are: legal framework; justice needs; legal awareness, access to legal advice and representation; access to courts; fair process and outcome, and trust in the justice system. She identifies the gaps in existing measures of access to justice as: focusing on the supply side of justice, rather than the demand side; minimal data collected on awareness of rights, remedies and institutions and legal literacy- although this is recognized as an essential component of access to justice; and, minimal data collected on justice outcomes – she argues that there is value in knowing the outcomes of cases and how people felt about those cases. Marchiori's study focused solely on state justice, although she acknowledged the importance of informal justice and that indicators targeting non-state systems should be developed. Such indicators were omitted from Marchiori's proposal due to the challenges involved in measuring the activities of informal justice mechanisms. Despite these limitations, Marchiori's work remains the most in-depth assessment and compilation of current access to justice indicators.

Now that existing measurement tools have been introduced, I wish to analyse how they actually measure the concept of access to justice. This knowledge will allow me to think critically about recommendations for my conceptual measurement framework.

2.4 The Use of Indicators

The above tools unanimously rely on the use of indicators to measure the rule of law and access to justice. deConing and Romita (2009) define an indicator as a “qualitative or quantitative factor or variable that provides a simple and reliable means to measure achievement, to reflect the changes connected to an intervention, or to help assess the performance of an actor” (pg. 5). Proxy variables are defined as, “a variable that is assumed to reflect the behavior of the phenomena in question, and which thus can be used as a single indicator to measure change of the phenomenon” (pg. 52, Dandurand, Kittayarak and Macphail 2015). For complex concepts, including the rule of law and access to justice, where it is impossible to measure the concepts directly, measurement relies on the use of proxy variables (Ginsburg, 2011).

The literature does not demonstrate any dispute to the components of these definitions and generally supports indicators as effective tools for monitoring progress, establishing benchmarks and prioritizing focus areas (see for example, Hammergreen, 2011; Morgan, 2011, and Saisana and Saltelli, 2011). The literature does demonstrate, however, criticism on the use of indicators in developing, conflict affected and post-conflict settings. For example, Botero and colleagues (Botero et al. 2016), argue that indicators are often prone to abuse by governments and other international and national stakeholders. They also argue that the potential for this kind of abuse is compounded by the fact that developing effective indicators is a complex and multifaceted process. deConing and Romita (2009) expand with research that demonstrates the process of selecting indicators requires prioritization among competing goals. This process

generally involves negotiation and trade-off between the capacity of a state to collect and measure data, and the necessity to pinpoint urgent needs.

DPKO (2015) reports that reliable data for the rule of law and justice sectors are generally unavailable in post-conflict states. Dahl, Hak and Noldan, (2010) demonstrate that the quality of indicators is determinant on the quality of the data used to compose them. These factors combine to create an atmosphere where political and policy pressure may lead to ineffective and hasty methods of data collection which greatly reduce the reliability and validity of the indicators.

Indicators also have the potential to be used as tools for embedding power relations and global governance, drawing in citizens who were outside of the indicator development and measurement process (Davis, Kingsbury, and Merry, 2012). Ginsburg (2011), elaborates offering the example of inadequate proxy indicators being unintentionally seen by citizens as a true indication of the quality of the justice institution being measured. This has the possible effect of citizens avoiding use of the formal court systems and relying on alternative justice mechanisms, which may or may not be in accordance with international human rights norms.

Understanding the dynamics of indicators confirms the necessity of developing indicators which are methodologically sound and relevant to the specific context in which they are being applied. Particular in post-conflict situations, the development of indicators should be a careful and methodical process in order to avoid the drawbacks discussed above.

2.5 Disaggregation of Data to capture the experiences of women and vulnerable groups

The literature demonstrates consensus among practitioners that the most readily available method of capturing the gender inequality and the experiences of vulnerable groups is through the disaggregation of data. For example, a report of the Inter-Agency and Expert Group on

Sustainable Development Goal Indicators states, “Sustainable Development Goal indicators should be disaggregated, wherever relevant, by income, sex, age, race ethnicity, migratory status, disability and geographic location, or other characteristics, in accordance with the Fundamental Principles of Official Statistics” (pg. 7). This emphasis on disaggregation is consistent across the literature due to the capacity to pinpoint differences in access between various groups (see, for example: Saferworld, 2013; UNHCHR, 2012; UNICEF, UNPBSO, and UNDP, 2013; Vapnek, Boaz and Turku, 2016; Winkler and Satterthwaite, 2017). By assessing the disaggregation of data, inequalities between gender and vulnerable groups in accessing justice can be identified. It is the intention that highlighting the inequalities will provide the measurer with the necessary data to assess the current state of vulnerable groups in accessing justice and take steps to improve the situation.

2.6 Chapter Summary

In this chapter I explored the key concepts of post-conflict environments, situated access to justice within the broader relationship to the rule of law and human rights, and defined justice and access to justice for the purposes of my research. I also reviewed the barriers to access to justice, the specific forms of criminal and civil offending which generally occur in post-conflict situations, and common justice mechanisms in these situations. I further investigated the capacity for post-conflict states to measure access to justice and provided an overview of existing measurement frameworks and indicators designed to measure access to justice. This knowledge informs the development of my own conceptual measurement framework designed to measure access to justice in post-conflict settings.

Chapter 3: Conceptual Framework and Methodology

There is currently no existing measurement framework to measure access to justice as experienced in post-conflict settings. To fill this gap through the creation of a conceptual framework for measuring access to justice, my thesis explores and analyzes literature on access to justice, existing measurement frameworks, and data gleaned from preliminary consultations with subject matter experts in San Jose, Costa Rica. I then suggest a conceptual measurement framework by determining key access to justice themes relevant to post-conflict settings, logically relating them together, and proposing methods of feasibly measuring these themes in post-conflict settings. The following research question guided this study:

- 1.) How can access to justice be measured in post-conflict environments?

The desired outcome of my research is to provide practitioners with the beginning of a holistic and feasible way to measure access to justice in post-conflict settings. Social constructivism and universal norms perspectives provide an appropriate theoretical orientation. Thematic analysis was used to analyze the data collected through consultations with subject matter experts. Additionally, a deep respect for universal human rights and the principles of the SDGs guided and informed this research.

3.1 Universal Norms and Human Rights

The concept of norms can be described as embodying aspects of “oughtness”, ideal behavior, and shared moral values (Finnemore and Sikkink, 1998). In the context of access of justice, norms around justice are linked to international human rights law. *The Universal Declaration of Human Rights (UDHR)* is recognized by states throughout the world. Despite the fact that the UDHR is not legally binding, the document remains the primary source of universal human rights standards and norms (Hannum, 1998). Access to justice is enshrined in articles 8

and 10 of the UDHR and, in addition, in the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social, and Cultural Rights*. The inclusion of access to justice within these documents demonstrates that the concept is a norm which has been accepted by the international community. In addition, human rights have been adopted by many documents guiding international law and can be understood as a universal concept (Donnelly, 2013).

With specific respect to measuring aspect to justice, adopting a human rights lens is appropriate as human rights norms and standards may provide the basis for indicators for measuring access to justice. For example, the Human Rights Indicators (OHCHR, 2012) provide many indicators which conceptualize access to justice as meeting standards of human rights norms. Existing international documents, such as the UDHR and the International Covenants mentioned above, provide specific human rights standards which have become norms for the international community. These may be used to measure access to justice. Standardizing the measurement of access to justice solely in terms of compliance with human rights norms is not my intention, as I recognize that norms vary contextually; that being said, many components of access to justice are measureable by comparison with existing human rights norms and standards. I give this consideration in my conceptual measurement framework.

3.2 Social Constructivism

Subjective meanings are often developed through historical and cultural norms experienced (Creswell, 2014; Gergen, 1985). Constructivism focuses on these norms, along with ideas, knowledge, culture, and argument, emphasizing the role of collectively held ideas on social life (Finnemore and Sikkink, 2001). Social constructivism is based on the assumption that individuals seek to understand their worlds by developing subjective meaning of their

experiences regarding specific objects or things (Crotty, 1998; Lincoln and Guba, 1985; Mertons, 2010; Rose, Berger and Leukmann, 1967). In addition, constructions of the world have implications for what is permissible or acceptable and how people may treat each other (Gergen, 1985). In research, the intent of constructivism is to “make sense of (or interpret) the meaning others have about the world.” (pg. 8) and generate a pattern of meaning (Creswell, 2014).

In the case of my thesis, I intend to make sense of the meaning others have of access to justice by reviewing their literature and conducting consultations with subject matter experts. Once the pattern of meaning is identified, I formalize these patterns of meaning into a conceptual framework which proposes the main dimensions of access to justice applicable to post-conflict situations.

3.3 Conceptual Frameworks

In order to offer my findings in a way which is best suited to future research and deeper analytical thought (Bruner, 1983; Hills and Gibson, 1992), my results are presented in a conceptual measurement framework which logically relates the key constructs, or themes, of access to justice as identified by the literature and the interview data.

As defined by Childs (2010), a conceptual framework can further research through:

- The provision of a basis from which to interpret and form a coherent whole from the literature;
- Organization of emergent categories; and,
- The provision of a common ground with other researchers to reflect upon and challenge the research; and,
- Allowing for the articulation of the research findings.

As in the case of my thesis, conceptual frameworks assist researchers by making meaning of findings (Smyth, 2004) and are intended to evolve to theory as the research evolves (Miles and Huberman, 1984).

3.4 Reflexivity

In this section I give an account of myself in the role of researcher for this project. This demonstrates that my role in this research has not been one of a neutral observer (Silverman, 1997), but rather the data has been co-produced along my own interpretations and identity (Nightingale and Cromby, 1999).

In conducting my research, I became aware of a number of factors that influenced my analysis. I was aware that my personal reasons for engaging in this research were shaped by my own views on the importance of human rights and access to justice, particularly for women and vulnerable populations. Understanding my own beliefs about access to justice led me to be mindful of “wishful thinking” and viewing the world as it should be, rather than it is (Coomans et al, 2010). Recognizing that I feel passionately about the topic extra efforts – such as self-reflection, checking in with the thesis supervisor and committee member, and self-awareness, were taken to ensure that the research conducted is in line with the human rights research principles of “impartiality, objectivity, and reliability of information” (Coomans et al, 2010). Being aware of my own beliefs on access to justice allowed me, at all stages of the research process, to reflect on the ideas that I had developed from the data and compare it with the data set to ensure that it was truly consistent.

As I am a Caucasian Canadian woman, during the interviewing stage reflection and awareness were brought to understanding social, cultural, and political relationships within the host country of Costa Rica. Using reflexivity and conscious effort, the research was conducted

with an understanding of the variances in different societies, including post-conflict societies. The use of a research journal (Finlay and Gough, 2003) supported me in reflecting what I personally brought to the research process and how my views informed the analysis process.

3.5 Data Sources and Collection Methods

Data was collected in two phases: (1) Desk Review and (2) Consultations with Subject Matter Experts. The Desk Review phase had two sub-phases: Phase 1a, Literature Review, involved an in-depth literature review to develop constructions, or themes, of access to justice with particular attention given to the way access to justice is experienced in post-conflict situations. This phase continued throughout the research process as the themes identified by the subject matter experts were developed. Phase 1b, Identification of Existing Tools, involved the systematic identification and review of existing measurement frameworks, or tools, which seek to measure access to justice. The criteria for inclusion in this analysis were: the tool was developed or adopted by national and/or international agencies and organizations; the tool is relevant to the measurement of access to justice as defined for the purpose of the present project; the tool has been applied or is otherwise relevant to post-conflict situations. The purpose of this was to identify the various ways access to justice is currently being measured and to build on the experiences of the tools by combining their applicable constructs into one reference model explicitly designed for use in post-conflict environments.

Phase 2, Consultations with Subject Matter Experts, involved preliminary consultations with ten subject matter experts who had extensive experience in providing justice or studying justice systems in San Jose, Costa Rica. The purpose of Phase 2 was to determine the way subject matter experts constructed access to justice. This understanding was used to triangulate the data of Phase 1 and confirm the themes of access to justice to include in my conceptual

measurement framework. A case study approach was chosen for Phase 2 as it was my intention to support an in-depth and rich understanding of my research topic (Blatter, 2008; Merriam, 1998; Cronbach, 1975). It is important to note that it is difficult to generalize outside the context of this study (Creswell, 2014), however, the value in the case study is in its ability to analytically generalize theory (Yin, 2014). The consultations that took place in Costa Rica do not represent a “sample” (Yin, 2014), but rather a distinct case study of its own.

3.6 Interview Process

The consultations took place at the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders (ILANUD) in San Jose, Costa Rica, due largely in part to the successful awarding of an Irving K. Barber Scholarship. Established in 1975, ILANUD partners with the governments in Latin America on essential access to justice areas including: constitutional affairs; prosecution and public defense; police and correctional work; justice for disadvantaged groups; legal information; statistical information on the judiciary; administrative and judicial training; and, grass roots legal education (ILANUD, 2017). While ILANUD is based in Costa Rica, the agency, in practice, represents all of Latin America directly, and the rest of the world indirectly as part of the United Nations Crime Prevention and Criminal Justice Programme network. Costa Rica as a distinct state also offers a relevant perspective as a country in transition which has undergone many changes in its development process (Erickson and International Monetary Fund, 2015). The justice systems of Costa Rica are considered highly progressive for Latin America (Lauderdale and Cruit, 1993; UN General Assembly, 2004)) and lessons learned can serve to inform other states emerging from turbulence. ILANUD’s knowledge of justice systems in the region and the extensive network of contacts

with justice providers allowed for a diverse sample of high level officials with extensive and relevant expertise in access to justice.

Serving as the gatekeeper (Creswell, 2014), ILANUD provided logistical support by reaching out to subject matter experts in their primary language (Spanish), organizing an interview schedule with all ten research participants, providing interpreters where necessary, providing a private location in which to conduct the interviews, and providing transportation to off-site interviews. The ten research participants were interviewed over a two-week period in March, 2017.

The subject matter experts were selected using purposive non-probability sampling (Tansey, 2007) based on their history of: (1) their professional experience in the direct provision of justice and, 2) their professional experience in the assessment and analysis of justice systems. Utilizing purposive non-probability sampling was valuable in identifying experts with extensive experience in my research focus; this increased the likelihood of gaining answers to the research questions (Creswell, 2014). The interviewees were from the non-profit, academic, judicial, United Nations, NGO, and governmental sectors. Representatives from the following agencies shared their insights: ILANUD, The Inter-American Court of Human Rights, The Inter-American Institute of Human Rights, The Center for Justice and International Law (CEJIL), The United Nation's University of Peace (U Peace), The United Nation's Development Program (UNDP), The Supreme Court Justice of Costa Rica, The Justice Tribunals of Costa Rica, The Judicial Power of Costa Rica, and the National Commission for the Increase of Administration of Justice in Costa Rica.

The interviews lasted for 30 minutes to one hour and, as well as addressing the predetermined questions prepared, involved deeper exploration on the topics in the natural

course of the interview itself. Participants were encouraged to elaborate on their personal experiences and perspectives on access to justice. Of the ten interviews conducted, four were conducted in Spanish with the remaining six being conducted in English.

3.7 Thematic Analysis

Data analysis was conducted using social constructivist thematic analysis (Braun and Clarke, 2006). I chose this form of analysis as I sought to obtain rich data on how the subject matter experts constructed access to justice. Thematic analysis was an ideal method to develop such rich data as it is exploratory and can also be used to structure the data. In addition, thematic analysis is not tied to any epistemological position and can be applied across theoretical and epistemological approaches – including social constructivism (Braun and Clarke, 2006).

As it was my intention to situate the interview data into a larger body of existing literature and measurement tools, data was analyzed in a theoretical or deductive way (Boyatzis, 1998; Hayes, 1997) with a focus on information at the latent level. This approach identified the underlying assumptions, conceptualizations and ideologies that are theorized as informing the semantic content of the data (Braun and Clarke, 2006). Consistent with a social constructivist orientation, the thematic analysis conducted did not seek to focus on the psychology of the individual, but rather the socio-cultural contexts and structural conditions that fostered the individual accounts provided. Braun and Clarke (2006) identify six phases of thematic analysis which I followed in analyzing the data. I provide an overview of the five phases conducted and the steps taken within each phase. The sixth step that Braun and Clarke (2006) refer to is the production of the final report.

Phase 1: Familiarizing oneself with the data

Transcription of the data occurred to facilitate the interpretative skills needed to analyze the data (Lapadat and Lindsay, 1999). The interviews conducted in Spanish were translated into English and were verified with the ILANUD representative who had been present during the interviewing to ensure that all information was relevantly captured. During this phase I conducted repeated (at least ten) readings of the data while I searched for meanings and patterns. The data that was translated received more attention to ensure that all relevant information was captured. Transcriptions were tested against the original audio recordings for accuracy. I also used my reflexivity journal to note down my thoughts about the process.

Phase 2: Generating initial codes

During this phase the entire data set was systematically sorted into codes, “the most basic segment, or element, of the raw data or information that can be assessed in a meaningful way regarding the phenomenon” (Boyatzis, 1999, pg. 63) and organized into meaningful groups (Tuckett, 2005). Post-it notes were used to identify segments of the data.

Phase 3: Searching for themes

After all data had been initially coded and collated, analysis was refocused to the broader level of themes. Post-it notes were clustered in various ways as I considered how to combine them to form an overarching theme. As described by Braun and Clark (2006), the ‘keyness’ of the themes was not determined by quantifiable measures, but on whether it captures something in relation to the research questions.

Phase 4: Reviewing themes

During this phase, refinement of the themes occurred. Some themes were combined while others were broken apart to create a candidate thematic map. Using Patton’s (1990) criteria of internal homogeneity and external heterogeneity to judge the categories, data was

grouped together meaningfully while still retaining clear and concise distinctions between the themes. An additional step in this phase involved assessing whether the candidate thematic map ‘accurately’ represented the meanings of the data set as a whole. The entire data set was reread to ensure that the themes identified adequately represented that data set as a whole.

Phase 5: Defining and naming themes

During this phase, themes were defined and refined to identify the ‘essence’ of what each theme is about and determining what aspect of the data each theme captures (Braun and Clark, 2006). I gave consideration to how each theme fit into the broader picture that the entire data set painted in relation to the research questions. For each theme a detailed analysis was written (see Chapter 4).

3.8 Rigor and Trustworthiness

Rigor, generalizability, and validity were increased by triangulation of multiple sources of data (Creswell and Miller, 2000; Lincoln and Guba, 1985). Peer debriefing, or discussing emergent findings with critical colleagues (Lincoln and Guba, 1985), was used to ensure that the analyses were grounded in the data.

The professional status of the subject matter experts identifies them as “elites” (Marshall and Rossman, 2016). This status strengthens the validity of data received as information from elites is generally considered to be accurate and valuable (Marshall and Rossman, 2016). The information I received from the subject matter experts demonstrated a broad range of rich information on the topic of access to justice, the broader systems that access to justice initiatives occur within, and the challenges for particular groups. Flexibility in scheduling, transparency with communication the research goals, and maintaining good etiquette throughout preserved the professional relationship with the elite subject matter experts (Harvey, 2010).

A potential issue is the impact of translation on the data. While the researcher is proficient in Spanish, Marshall and Rossman (2016) detail the challenges with data which has been translated. They argue that translation from one language to another is a complex process which involves many nuances with extracting meaning from the data. To minimize any potential for misunderstanding and ensure rigor of the data, for those interviews completed in Spanish a representative from ILANUD, speaking Spanish as their primary language, attended and took notes alongside myself. After the interview my notes were compared with the notes taken by ILANUD to ensure that the information provided in the interview was fully captured.

3.9 Ethical Considerations

To ensure ethical research principles were adhered to, ethical approval was sought and obtained through the Royal Roads University (RRU) Ethic Boards in compliance with the *Request for Ethical Review for Research Involving Humans* (2014).

Free and informed consent was provided by each subject matter expert at the beginning of each interview. All participants received a written and verbal explanation of the Informed Consent Form (see Appendix A), which they signed to confirm their acceptance of the research terms. If the interview was conducted solely in Spanish a representative from ILANUD provided the explanation in Spanish. In the remaining situations communication occurred solely in English. Participation in research was clarified to be fully voluntary and all participants were clearly informed of their ability to withdraw from the study at any point in time. Participants did not receive any monetary incentive to participate in the study. The subject matter experts were provided with the contact information of the researcher, the host organization, and Royal Roads University to facilitate ease of communication if any questions came up after the interview.

Chapter 4: Case Study Findings

In this chapter I discuss the data collected from interviews with ten access to justice subject matter experts in San Jose, Costa Rica. Utilizing thematic analysis under a social constructivist framework, nine key themes were identified from the interview data. As expected from the literature, there is considerable overlap between the themes. To manage this Patton's (1990) criteria of internal homogeneity and external heterogeneity was used to judge the categories; data was grouped together meaningfully while still retaining clear and concise distinctions between the themes. The resulting themes represent those categories that the subject matter experts used to construct and define access to justice. They are: (1) the necessity for strong, credible, and trustworthy institutions; (2) the importance of data in strengthening access to justice initiatives; (3) the necessity of legal aid, particularly in civil cases; (4) the need for timely justice; (5) the importance of citizens having an awareness of their rights; (6) the importance of alternative dispute resolution (ADR) mechanisms as a complementary partner to formal justice processes; (7) a focus on women's rights; (8) the challenges with vulnerable groups and the universal expectation of "right to life"; (9) the impact of geography on access to justice.

4.1 Discussion of Themes arising from the Interviews

4.1.1 Strong, Credible and Trustworthy Institutions

Trustworthy, fair, and democratic institutions were identified as the most commonly stated component of access to justice identified during the interviews. Lack of trust, impunity, and the strength of institutions were common constructions of access to justice in interview data. One subject matter expert broadly stated, "in the Americas there is no trust in the justice system". This viewpoint was corroborated by the majority of the experts. One expert specifically stated,

although access to justice may be attainable in theory, “true access begins with trust in the system”, with another stating, “there needs to be a fight in the perception of impunity”. It is relevant to note one expert’s remarks that there is greater trust in the judiciary in Costa Rica than in other countries of the region in general.

Crucial themes contributing to this lack of trust were identified to be: the credibility and impartiality of institutions, corruption (particularly among judges); external forces on the judiciary; impunity; and political interests. “Everyone is connected” was a statement used to describe economic interests – in this case coffee, bananas, and palm oil – which are becoming formalized in the judicial system. The politicization of the judicial branch was also identified as having a negative impact on the quality of justice received.

Increased formal and quality education for judges and justice personnel were identified as necessary aspects of strong and accessible justice systems. It was also identified that justice systems are weakened through judges not representing the diversity of the population. One expert stated that in Costa Rica, out of 22 persons making up the Supreme Court, only 7 are women.

According to one expert, access to justice in Costa Rica has progressively increased. The expert attributed this to the open and independent nature of trials, the ability of every case to go to the Supreme Court, the lack of pressure from criminal organizations, and the independent and impartial nature of judges. Another expert affirmed this view crediting Costa Rica’s progress to solid institutions, strong judges and magistrates, and effective training of the judiciary.

4.1.2 The Importance of Data in Strengthening Access to Justice

Analysis of the interview data identified the necessity, from the viewpoint of the experts, of high quality data as a method of improving access to justice. It was shared that in order to

develop national capacity, justice systems need to be regularly reviewed and should be performance based. It was understood and widely shared among the experts that statistics and data are a necessary requirement for developing initiatives which seek to increase access to justice. Despite this recognition, the sharing of information among actors in the system was identified to be a significant challenge.

Particularly relevant to the development of indicators designed to measure access to justice were comments made about the challenges with measurement and the ability to gather data on justice systems particularly using perception data. An expert stated, “in many countries around the world the media tries to replace the justice system”. The expert further indicated that perceptions around justice are distorted – largely through the lens of the media. Another expert expanded, offering that, although not as much of an issue in Costa Rica, in much of the world, the media wants anyone who commits a crime to go to jail.

4.1.3 The Necessity of Legal Representation – In All Cases (Civil and Criminal)

The presence of financially accessible legal representation was universally determined to be a primary element of increased access to justice by the experts. The majority of the experts agreed that the importance of legal representation for civil cases was extremely important as well. It was shared that there is much more support (in the forms of stipends, bus tickets, etc.) within the criminal systems than the civil systems. One expert stated, “public defenders for civil law should be mandatory”. The majority of others affirmed that the violations of rights often occurring in land, family, indigenous, and migrant justice proceedings could be greatly reduced by the presence of legal representation. Another suggestion was the presence of legal representation for victims. One expert suggested this would “lead to a balance between the

victims and the offenders. Offenders have more rights than the victims and this needs to change”.

4.1.4 The Need for Timely Justice

The majority of the experts determined justice to be a slow process -- with this delay negatively impacting access to justice. One expert highlighted this point using the example of migrant workers stating that, “the labour force comes and works in sections, so often they don’t make it to the end of the process as the court process is so long – they flee, they leave for work”.

4.1.5 Awareness of Rights

The experts unanimously agreed that awareness of rights was essential for access to justice. The majority of experts stated that individuals believe they know their rights, but do not have the technical knowledge to fully understand them – “there are a lot of myths”. Another expert shared, “people generally have the education and awareness to identify a legal problem, but not the proper way to solve things”. The importance of empowering individuals to know their rights was evident in discussions with all of the experts; many experts spoke of the complexity of justice processes. One recommendation for increasing access to justice among vulnerable populations was to spread knowledge among the poorest populations because they “haven’t been empowered to access these (justice) systems”.

4.1.6 Alternative Dispute Resolution (ADR) as a Complement for Formal Justice Processes

ADR in Costa Rica refers to mediation and arbitration and not the customary or informal justice I describe in my literature review. ADR was recognized as a necessary compliment to formal justice proceedings, although experts disagreed on how best to utilize ADR. One expert stated that “judges don’t think that it is important”, while another expert spoke of ADR being

discriminatory and exclusively for the rich. Citing that “60% of crimes in the country are non-violent crimes”, such as property crimes, an expert expressed interest in learning more about how ADR can support formal court proceedings.

4.1.7 Women’s Rights/Gender equality

The interviews confirmed that, although essentially important, gender equality was far from being achieved in practice. Theoretically women have equal rights, however, the experts stated that there are numerous institutional and cultural challenges in recognizing those rights. Multiple experts spoke of the effect of machismo in Latin America. One expert stated, “women who are raped are told by judges that it is because how they dressed or how they behaved”. Stigma was repeatedly shared as a barrier for women claiming their rights which, in turn, prevents them from accessing services which help protect their rights. One expert identified gender inequality as the primary challenge with access to justice in the region. Another stated, “child support laws are ineffective” and “there are many challenges with domestic violence issues”. Another advocated for the need to improve cultural changes, such as sexist stereotypes and subtle sexism in judicial rulings. Many experts shared that Costa Rica is taking progressive steps to currently train prosecutors to have a standard approach to gender issues.

4.1.8 Protection for Vulnerable Groups/Right to Life

When asked about the rights most commonly violated, the right to life emerged as the dominant response. “Which rights are most violated depends on the country, but right to life is the most basic – once right to life has been established, other rights, such as gender rights and migrant rights can begin to be respected”. The recognition of the right to life was often linked to the experience of vulnerable groups.

Exploring this, one expert confirmed the “challenges with how you define vulnerable populations”. The expert advocated for an increased understanding of the needs of different populations. Women, migrants, illegal immigrants, “people on the farm” and the LGBTQ population groups were identified as being treated differently, noting “trans people are treated the worst”.

Using the experience of migrants, one expert highlighted the various ways that belonging to a vulnerable population group can further exacerbate existing barriers. For this population, “fear of deportation is an obstacle to access to justice”. This fear of deportation was confirmed by another expert. “Even though they tried talking about it through the radios, there is still a lot of fear”. As well, “the mobility of migrants limits their participation in the process and the follow-up”.

One expert discussed the importance of classifying prisoners as a vulnerable group, stating that prisoner rights are often extremely violated. In Costa Rica, the expert stated that “the prison conditions are terrible”. Expanding, the expert indicated, “in 15 years we went from the prisons of Sweden to the prisons of Honduras.” When questioned about this, the expert shared that there remains an “us versus them” mentality about prisoners which prevents the governments from investing in infrastructures, such as jails.

Poverty arose as a specific vulnerability during the course of the interviews. One judge mentioned, “99% of people coming in are in poverty”. Poverty was strongly linked to lack of trust with one expert sharing, “most of the time poor people don’t access justice systems because they don’t want to waste their time”. Another stated, people “feel that the poor have no justice at all”.

4.1.9 Geographic, Language, Physical and Financial Accessibility

Geographic, language, physical and financial accessibility were identified by the majority of experts as significant barriers to access to justice. When discussing these types of operational access barriers, one expert said “there are problems in all steps of the chain”. “There are problems with physical access for disabled people. Indigenous people don’t have translators...” were a few challenges mentioned by another expert. “Hours of the courts” was another challenge, particularly for migrant workers. One expert discussed impact stating, “the obstacles above prevent people from even accessing the court system”. “People need an opportunity to enter the system regardless of outcome”.

4.2 Study Limitations

The above themes represent the ways that the subject matter experts I interviewed construct access to justice. One of the limitations of the consultations conducted is the Latin American focus of the case study and relatively small sample size of subject matter experts. In recognizing this, the intent of the research was always to generalize analytically (Yin, 2104) and situate the case study within an existing body of literature. A further limitation of the case study is the reality that many subject matter experts did not have official experience in providing or assessing justice systems in a post-conflict setting. This limitation was buffered by the fact that the subject matter experts all had extensive experience in providing or assessing justice systems and were able to provide an expert elite perspective on the topic of access to justice.

Now that I have discussed my case study findings, I turn my attention to presenting my conceptual measurement framework.

Chapter 5: Access to Justice in Post-Conflict Settings Conceptual Measurement Framework

In this chapter I propose a conceptual measurement framework for measuring access to justice in post-conflict situations. This conceptual framework is based on the access to justice literature, an analysis of existing measurement frameworks, and a case study involving consultations with subject matter experts in San Jose, Costa Rica. It is an attempt to capture information on the major dimensions of access to justice as experienced in post-conflict situations while taking into account the challenges involved in measuring access to justice in these environments. My framework takes a constructivist, nationally owned, and human rights-based approach to access to justice.

The intent of my conceptual measurement framework is not to standardize the measurement of access to justice or evaluate initiatives to improve access to justice. Its purpose is to provide practitioners with a simple conceptual/analytical framework that identifies key dimensions to be measured and their potential relations to each other. Although my framework does not currently propose specific indicators (other than for illustrative purposes), it can hopefully be used in the field as a tool for developing a set of indicators to monitor progress in improving access to justice and measure the impact of specific initiatives in support of that goal.

5.1 Parameters of the Conceptual Measurement Framework

- Human rights based and emphasizes the links between human rights, access to justice, peacebuilding and sustainable development for all in accordance with SDG 16.
- Multidimensional and holistic, recognizing that access to justice is a complex interdependent concept and taking a systems approach to measurement.

- Flexible in order to be driven by the needs of practitioners and policy makers in a given context.
- Designed to offer realistic feedback on a number of essential components of access to justice.
- Limited to dimensions of access to justice that are generally accepted, non-controversial, and commonly experienced in post-conflict settings.

5.2 Dimensions of Access to Justice and Related Components

The dimensions of access to justice that follow, together, make up my proposed conceptual measurement framework. Prior to the framework being presented in table form, each dimension is briefly overviewed to provide an understanding of the concepts comprising the framework. It will be noticed that there is significant overlap between many of the components and dimensions. The intention of this was to provide triangulation of data sources in an effort to develop an in-depth and holistic picture of access to justice.

5.2.1 No One is Above the Law

The dimension of no one being above the law is particularly important in the post-conflict environment. Due to the overarching impacts of impunity, this component stands alone in my conceptual framework.

- Absence of impunity

Impunity, as identified by the subject matter experts and the literature (Lalonde and Dandurand, 2009; OECD, 2005; Pouligny, 2003), can significantly impact people's ability to access justice. In the context of peacebuilding, equal accountability under the rule of law, or the absence of impunity, is an opportunity to build trust and legitimacy between justice systems and

citizens. This trust and legitimacy has been argued to be essential in successful rule of law reform and access to justice (Ghani and Lockhart, 2008; Kleinfeld, 2012; Marchiori, 2015) with a lack of trust being shown to divert people away from formal mechanisms (Baker and Scheye, 2009; Luccaro, 2016; Marc, 2012) or from any justice mechanism at all. This diversion from justice systems can lead to perpetuation of conflict and injustice which may likely have impactful consequences (Coleman, 2000; Deutsch, 2014). The subject matter experts I consulted often linked poverty with a lack of trust in justice systems. Establishing trust among those in poverty and other vulnerable populations is an important aspect of achieving access to justice for these groups. Reduction of impunity is an essential component of establishing this trust which, in turn, increases access to justice.

5.2.1 Impediments to Access to Justice

This dimension recognizes the common obstacles of effective access to justice as described by both the subject matter experts and the literature (Baker and Scheye, 2009; Bloch, A, 2010; Marchiori, 2015; McKay 2015; O'Connor, 2015; St. Germain and Dewey, 2013; Vapnek, Boaz and Turku, 2016). Measuring this dimension provides a practical understanding of blocks in pathways to justice (Luccaro, 2016) and the barriers that individuals experience in attempting to access justice. The components of “awareness of rights” and “knowledge of the law” rectify a gap in existing measures of access to justice as identified by Marchiori (2015) who argues that minimal data has traditionally been collected on these key components of access to justice. This dimension is the only dimension in the framework in which gender equality is an explicit and stand-alone component. The sole gender specific component is not intended to minimize the concerns with women’s rights in post-conflict environments, rather, it has been shown that disaggregation of data is an appropriate methodology for capturing gender equality or

inequality among all components (Saferworld, 2013; UNHCHR, 2012; UNICEF, UNPBSO, and UNDP, 2013; Vapnek, Boaz and Turku, 2016; Winkler and Satterthwaite, 2017).

- Awareness of rights
- Knowledge of the law

The two components above can be conceptualized together as “legal awareness”. In addition to the emphasis in the literature (CEDAW, 2015; McKay, 2015; O’Connor, 2015), the data from the subject matter experts show that, unanimously, the awareness of rights and the law are considered essential components of access to justice. The AJAT, Access to Justice BC, Barendrect (2010) and Marchiori (2011) all include the concepts of legal awareness in their frameworks as a significant component of access to justice. Without this awareness those seeking justice are unable to claim their rights and/or achieve justice.

- Gender equality

This component recognizes that, as shared by the subject matter experts and the literature, women, in general, and in particular, in post-conflict settings, experience access to justice differently (Bachelet, 2012; Brinks, 2008; Davis and True, 2017; Luccaro and Gaston, 2014; O’Connell, 2011; Walsh and Menjivar, 2016). The component recognizes that biases against women can significantly hinder women’s ability to access justice (CEDAW, 2015)

- Discrimination

This component is linked to the experiences of women and vulnerable groups. As described by the ROLI, the experiences of vulnerable groups are an essential component of assessing the rule of law and access to justice. The Human Rights Indicators explicitly link discrimination to the realization of human rights. The presence of discrimination may deter individuals who have a

grievance to even consider beginning a justice process. This limits the opportunity for them to access, or ever achieve, justice. If discrimination occurs during the justice process the likelihood that the individual will be satisfied with the outcome is significantly reduced. This also limits the likelihood that they would return to a justice system for a future grievance.

- Literacy and language accessibility

Recognizing that language and literacy may be barriers to access to justice, this component also captures information on the experiences of minority populations who speak a language other than the dominant language or those in poverty who are illiterate.

- Physical accessibility of justice mechanism

Physical accessibility refers to geographic proximity of the justice mechanism while touching on accessibility issues for those with disabilities. The AJAT and Access to Justice BC frameworks both recognize physical accessibility as a key element of access to justice. This component recognizes that if justice mechanisms are inaccessible access to justice does not exist (CEDAW, 2015; Marchiori, 2010). It also recognizes that justice mechanisms may be centralized in the more urban areas. This largely restricts access to justice for the rural population.

- Fear

Fear can be linked with mistrust which, as described under the bullet “Absence of Impunity”, is a serious barrier to accessing justice. With fear of justice systems, it is likely that an individual will ever begin on a pathway to justice.

5.2.2 Institutional Elements

While I argue for recognizing informal mechanisms as part of the legal landscape in post-conflict settings, increasing the legitimacy of formal mechanisms is important in providing the local population a possibly preferred, alternative option, which may be closer to international human rights standards and criminal justice norms. This dimension seeks to provide information on the capacity of institutions traditionally seen in formal justice systems.

- Strength of institutions (disaggregated by types of institutions and by different regions in the country)
- Free from corruption

I have grouped the two components above together as they are interconnected. The subject matter experts I consulted often described strong institutions as those free from corruption and discrimination. They also unanimously described strong institutions as being an essential prerequisite to access to justice. The ROLI identifies strong institutions, as measured by integrity, transparency, and accountability of the judiciary as a significant component of the rule of law. These two components are also linked to trust which is essential aspect of access to justice and is discussed further under the bullet “Absence of impunity”.

- Free from discrimination

The impact of discrimination is discussed under the “Discrimination” bullet above.

- Data is collected (outcomes of cases are recorded)

An component which may be of particular focus for post-conflict environments, is my suggestion that data is collected in order to strengthen institutions. The ability to collect high quality administrative data in post-conflict settings is generally very poor (AU and UNDP, 2015;

DKPO, 2015; Institute for Economics and Peace, 2016). This component draws attention to this important area and encourages the strengthening of this feedback loop.

- Capacity of officials (judiciary, bar, prosecutors, etc.)
- Judiciary is independent and free from political or economic influence

The above components are further linked to the recognition that strong institutions are necessary for access to justice. These components are particularly relevant to a post-conflict situation as previous justice actors may have fled the area, or a corrupt government may have held control over the courts. In the reconstruction process it is essential to recognize these components as valuable in securing access to justice for the population. Without strong and trustworthy justice systems, people will likely be deterred from seeking justice.

- Consistency in decision making (justice outcomes)

The importance of measuring justice outcomes and decision making is especially important in a post conflict situation as feelings of injustice may lead to perpetuated conflict (Coleman, 2000; Deutsch, 2014; Picard, Sargent, Bishop and Ramkey, 2015). This component is also linked to the importance of trust as a prerequisite to access to justice.

- Availability of legal information and legal advice
- Access to counsel
 - For victims
 - For vulnerable populations
 - For gender crimes
 - For property restitution
 - For land/housing rights

- For water rights
- Quality of legal representation

Access to legal advice and counsel were identified by the subject matter experts as essential components of access to justice. This is confirmed by the AJAT, Access to Justice BC, Marchiori (2015), and the ROLI, all of which list various provisions on access to legal advice and counsel. The focus on access to council for crimes traditionally experienced in the post-conflict settings, such as property, housing, and water rights and the specification of population groups of interest serves to emphasize traditionally marginalized groups and offer them legal protection in claiming their rights and accessing justice.

- Geographic accessibility

For information on this component see above bullet “Physical accessibility of justice mechanism”.

- Existence of complaint mechanisms and access to complaint mechanisms

This component acknowledges that, in order to access justice, systems must exist. In a post-conflict situation this component may be particularly relevant.

5.2.3 The Nature and Prevalence of Legal or Justiciable Problems

This dimension focuses on demand, or bottom up, experiences of access to justice. This dimension is particularly important in determining the unique local context (both generally and specific to various population groups, including those particularly impacted by the conflict). Having an understanding of user experience supports justice and security sector reform in accordance with the experiences of the local population. This focus on the local level has been

shown as essential in creating sustainable and effective justice reform (see, for example: Barendrecht, 2011; de Coning and Romita, 2009; Hammergreen, 2011; Oosterveld and Galand, 2012; Whaites, 2016). These components collectively address a general gap identified by Marchiori (2015), minimal data being collected on the demand side of justice in existing measures; also, a gap identified by Balint, Lasslett and Macdonald (2017) is addressed. They argued that there is a paucity on the specific types of crime that occur in the post-conflict environment. Understanding these local needs ensures that access to justice initiatives are meeting the needs of justice seekers.

- Legal problems of the general population
- Legal problems of various vulnerable populations
- Impact of unresolved legal problems on quality of life
- Financial/economic impact of unresolved legal problems
- Social/familial impact of unresolved legal problems
- Whether or not action was taken, and through which avenue, to try and resolve the problem

The above components follow the experience of Barendrecht's (2010) measurement framework which measures the above components as significant barriers to access to justice.

5.2.4 User Experience

In addition to component 5.2.3, this component focuses on demand, or bottom up, experiences of access to justice. Building off of the experience of existing measurement frameworks, such as Barendrecht (2010), Access to Justice BC and the Rule of Law Index, this component recognizes the importance of measuring user experience in the justice process. This

is also linked to trust and legitimacy as it has been shown that trust can deteriorate if people don't have an opportunity to voice their concerns on issues affecting them (Deutsch, 2014). This dimension can be applied to formal or informal justice systems which may be particularly useful in post-conflict settings where informal systems are prevalent (Baker, 2010; Baker and Scheye, 2009; Jackson, 2011; Luccaro, 2016; Roder, 2013; Tat and Bagshaw, 2014).

- Trust/confidence in institutions
- Trust in justice systems and key actors, such as the police and judges
- Blocks in justice pathways as experienced by users
- Experience of discrimination
- Experience of corruption in the justice process
- Experience of group pressure or other pressure not to resort to the justice system
- Perceived legitimacy of institutions
- Quality/satisfaction with justice outcome
- Timeliness of resolution/outcome
- Perception of fairness of justice process (procedural fairness)

The above components are linked to trust which is discussed under the “absence of impunity” bullet above.

- Path to justice taken

This component is based on the work of Barendrecht (2010) which advocates for understanding the pathway to justice as a way to understand why justice seekers may be driven towards mechanisms which are not in accordance with human rights norms and standards. This

is particularly relevant in a post-conflict environment as it can highlight key areas of need for the reconstruction process.

- Timeliness of access
- Timeliness of justice outcomes

Timeliness of the justice process and outcomes were identified as key components of access to justice by the subject matter experts. Barendrecht (2010) also identified time as a significant barrier to accessing justice. Lengthy processes may deter individuals from embarking on, or following through with, a path to justice.

- Effectiveness of resolution
- Access to effective redress/Compliance with judgements/outcomes

The above two components are linked to efficiency and fairness. The ROLI explicitly identifies access to effective redress as being essential to accessing justice. These components are also linked to the accountability of justice systems which is considered a key component of access to justice (CEDAW, 2015). If these components are not achieved injustice may perpetuate with detrimental consequences (Deutsch, 2014) and individuals may be less likely to access justice systems for future grievances.

Now that I have discussed the dimensions and components of my framework, for ease of use among practitioners, I synthesize the previous information into a table below.

Table 2: Access to Justice Conceptual Measurement Framework

Dimensions	Components
No one is Above the Law	<ul style="list-style-type: none"> • Absence of impunity
Impediments to Access to Justice	<ul style="list-style-type: none"> • Awareness of rights • Knowledge of the law • Gender equality • Discrimination • Literacy and language accessibility • Physical accessibility of justice mechanism • Fear
Institutional Elements	<ul style="list-style-type: none"> • Strength of institutions (disaggregated by types of institutions and by different regions in the country) • Free from corruption • Free from discrimination • Data is collected (outcomes of cases are recorded) • Capacity of officials (judiciary, bar, prosecutors, etc.) • Judiciary is independent and free from political or economic influence

	<ul style="list-style-type: none">• Consistency in decision making (justice outcomes)• Availability of legal information and legal advice• Access to counsel<ul style="list-style-type: none">➤ For victims➤ For vulnerable populations➤ For gender crimes➤ For property restitution➤ For land/housing rights➤ For water rights• Quality of legal representation• Geographic accessibility• Existence of complaint mechanisms and access to complaint mechanisms
The Nature and Prevalence of Legal or Justiciable Problems	<ul style="list-style-type: none">• Legal needs of:<ul style="list-style-type: none">➤ women➤ children➤ the elderly➤ those with disabilities➤ those who identify as LGBTQ➤ indigent populations

	<ul style="list-style-type: none">➤ ethnic/political/religious and social minorities➤ displaced populations➤ migrants➤ rural populations➤ prisoners• Legal needs of the general population• Impact of unresolved legal problems on quality of life• Financial/Economic impact of unresolved legal problems• Social/ Familial impact of unresolved legal problems• Whether or not action was taken, and through what avenue, to try and resolve the problem
User Experience	<ul style="list-style-type: none">• Trust/confidence in institutions• Trust in justice systems and key actors, such as the police and judges• Blocks in justice pathways as experienced by users

- Fees incurred in the justice process
- Bribes to key justice actors
- Language barriers
- Geographical barriers
- Physical accessibility
- Limited hours of courthouses or other justice mechanisms
- Experience of discrimination
- Experience of corruption in the justice process
- Experience of group pressure or other pressure not to resort to the justice system
- Perceived legitimacy of institutions
- Quality/satisfaction with justice outcome
- Timeliness of resolution/outcome
- Perception of fairness of justice process (procedural fairness)
- Path to justice
- Timeliness of access
- Timeliness of justice outcomes

- Effectiveness of resolution
- Access to effective redress/Compliance with judgements/outcomes

The strength of this conceptual framework is its broad and holistic coverage of common access to justice themes. Currently existing measurement tools focus on the rule of law, or peace, governance and security, while my proposed framework focuses explicitly on the experience of access to justice in a post-conflict setting and accounts for the unique crimes occurring in these environments, including property, housing, and water crimes. Now that my conceptual measurement framework has been discussed, I turn my attention to the potential application of the tool.

5.3 Potential Application of the Conceptual Measurement Framework

Although there are many challenges with indicators, such as their potential for abuse by stakeholders (Botero et al. 2016; Davis, Kingsbury, and Merry, 2012) and their inability to fully measure complex topics such as the rule of law and access to justice (Ginsburg, 2011), indicators are the method of measuring for all currently existing measurement tools. In the case of my conceptual measurement framework, nationally relevant and feasible indicators will need to be developed to explicitly measure each component within the dimensions. Further work is needed to ensure that the indicators developed are suitable for the post-conflict environment. In the meantime, Marchiori's (2015) work and existing measurement tools, including the United Nations Human Rights Indicators and Fragility Spectrum provide long lists of draft indicators for consideration. The work of Barendrecht (2010), the World Justice Project Rule of Law Index,

and SHaSA may provide options for indicators based on user experience and perception. Of particular importance, the ROLI, with its focus on application in the post-conflict setting, lists many indicators which could be used to measure the components of this conceptual measurement framework. For example, the ROLI offers indicators for measuring “bribes to judges, prosecutors or court personnel” (ROLI 59), “quality of legal representation” (ROLI 50), “impartiality of the courts” (ROLI 43), and “access to redress for miscarriage of justice” (ROLI 47) among many others.

5.3.1 Application Recommendations

Building off the methodologies of existing measurement tools, and the recognition that triangulation of data sources increases the rigor of the framework, I recommend that the first three dimensions are reviewed using a combination of methods suitable for a post-conflict environment, such as focus groups, expert interviews and desk reviews. As experienced by the ROLI, cost is likely to be a limitation of this approach and will need further exploration.

I recommend that information be collected on the final two dimensions using survey/perception data. As identified within the literature, the main limitations of using survey and perception data include: socio-cultural pressure to not report sensitive issues (Rodriguez Takeuchi and Hine, 2015); validity, bias, and inaccurate perceptions (Ginsburg, 2011); and habituation (Rodriguez Takeuchi and Hine, 2015). Despite these limitations, the ShASA experience demonstrates that collecting this type of data is feasible in a post-conflict environment. My conceptual framework attempts to minimize the methodological challenges of survey data by triangulating the data with more objective data gathered under the first three dimensions. The combination of data sources serves to strengthen the data and, as recommended by Rodriguez Takeuchi and Hine (2015) and The American Bar Association (2012), pinpoints

gaps between the quality of justice mechanisms and the justice desires of the local population. The dimensions and components of this conceptual measurement framework also provide information on the supply side of justice and the demand side – an area identified by Marchiori, (2015) as lacking in existing access to justice measurement tools.

5.3.2. Data Disaggregation

It is essential that the data collected are disaggregated, at a minimum by gender and, ideally, by a wide range of social, cultural, and political identities. This allows for identification of differences in access for women and members of vulnerable groups which fosters increased targeting of reform areas which increase access to justice *for all*, in accordance with SDG 16 (Saferworld, 2013; UNHCR, 2012; UNICEF, UNPSO, and UNDP, 2013; Winkler and Satterthwaite, 2017). This may be challenging in post-conflict environments (OHCHR, 2012). The inability to disaggregate data should not deter from a measurement process. That being said, it is important to recognize the importance of disaggregation on access to justice data as a method of understanding the situation for vulnerable populations. Building off the ROLI, my framework also directly incorporates the experiences of vulnerable groups in the “Nature and Prevalence of Legal or Justiciable Problems” dimension to highlight the importance of consideration of these groups.

I acknowledge a significant limitation of my proposed measurement framework. Although the framework theoretically takes gender into account, until national data collection capacity is increased and gender disaggregated data become available, the practical application of the framework to measure gender inequality in securing access to justice is limited.

5.4 Chapter Summary

This chapter has proposed a conceptual measurement framework for measuring access to justice in post-conflict settings based around 5 dimensions with relevant components under each dimension. My conceptual measurement framework represents a starting point with additional work needed to develop indicators to measure the components. Acknowledging the realities of the post-conflict environment, my framework seeks to be applicable in dimensions and components, as well as methodologically feasible to implement in a post-conflict situation.

Chapter 6: Conclusion and Recommendations:

Through the 2015 adoption of SDG 16: peace, justice, and strong institutions, the international community has recognized that access to justice, in accordance with the rule of law, is an important aspect of peacebuilding and sustainable development. While measurement frameworks exist, they are limited in their applicability to post-conflict settings by excluding key justice dimensions or proposing methodologies which do not account for the data limitations of post-conflict environments. In exploring how to feasibly and holistically measure access to justice in post-conflict settings, I have considered information from the academic literature, from preliminary consultations with subject matter experts in San Jose, Costa Rica, and from existing measurement tools. The outcome was the development of a conceptual measurement framework intended to practically and specifically measure access to justice in post-conflict settings. The conceptual measurement framework needs additional work to develop appropriate indicators which capture the dimensions and components proposed. In this regard, existing measurement tools, such as the ROLI and others I have discussed, may provide suitable indicators for measuring the dimensions and components proposed; the scope of this graduate research study did not allow for this depth of development. Additional research to support this development is

highly recommended. I also recommend that additional consultations with NSOs, practitioners and key justice actors, particularly those who are working in post-conflict environments, and from a broad sampling of diverse countries, be undertaken to strengthen the validity of my conceptual measurement framework. After further development, the practical implementation of my framework in a post-conflict environment would provide insightful information into its value and usability. As it currently stands, my conceptual measurement framework provides a balanced and holistic basis for constructing access to justice in post-conflict situations. It is acknowledged that further development is needed before the framework is implemented in the field. In this regard, all feedback on the dimensions, components, recommendations, and practicality of my conceptual framework is welcomed and appreciated.

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Appendix A

Participant Consent Form

Study Name: Exploring Access to Justice: Envisioning a measurement framework in accordance with the United Nation's rule of law and security indicators for SDG 16.

Researcher: Megan Capp. Master of Arts in Conflict Analysis and Management student at Royal Roads University, Sooke, BC. Email address: megan.capp@royalroads.ca. phone: 604.996.0065.

Project Supervisor: Dr. Eva Malisius. Program Head, Master of Arts in Conflict Analysis and Management at Royal Roads University, Sooke, BC. Email address: eva.malisius@royalroads.ca, phone: 250.391.2600.

For further clarification on this research process, Mary Bernard, PhD, Associate Vice President, Research and Faculty Affairs, Royal Roads University can be reached via email at: Mary.Bernard@royalroads.ca.

Purpose of the research: This research seeks to explore gaps in access to justice and, based on this information, enhance the current measurement framework used to measure progress towards the United Nation's Sustainable Development (SDG) Goal 16: Peace, Justice, and Strong Institutions. In order to achieve a fuller understanding of the benefits and challenges associated with the current United Nation's rule of law and security indicators, semi-structured interviews will take place with representatives from various international agencies representing the political, development, and security/justice sectors. The purpose of the research is to provide awareness to current gaps in the rule of law and security indicators, as well as fulfill the requirements for a thesis project as part of the Master of Arts in Conflict Analysis and

Management at Royal Roads University. The findings will be shared with stakeholders and participants in an effort to make the results impactful at a practical level.

What will you be asked to do in the research: You have been identified as someone within your organization who can speak to current strengths and challenges of access to justice. Your insight will be gleaned through the use of a one-time semi-structured interview which will take approximately 1 – 1.5 hours. There will be ample time available for you to share your views on the subject and offer suggestions for moving forward. The questions solely focus on the topics of access to justice and issues arising from trying to measure access to justice. If you think of more information you would like to share after the formal interview, you are welcome to contact the researcher at: megan.capp@royalroads.ca. The interview will take place in a method of your choice. While face to face interviews are ideal, if geography is a factor the interview will take place either via Skype or telephone. No one but the researcher will be present, unless you would like to involve someone on your end. While we cannot offer any inducements for participation, your contribution to widening the knowledge base on this topic is very much appreciated.

Risks and discomforts: There may be some discomfort around participating in a study involving addressing challenges with the United Nations. It is important to remember that the United Nation's does not sponsor this research and the research is being largely done to contribute to the academic conversation on effective indicators. It is important to be cognizant of the fact that the indicators do not “rank” countries, rather, the focus is on ensuring positive and sustainable progress for post-conflict societies.

There may be some fear as to how your responses will be perceived by leadership in your organization. Please note that only the final report, consisting of collated data will be shared with your organization. Please also note that your responses will not be attached to your name.

There may possibly be some discomfort arising from the fact that the researcher is Canadian and, as such, comes with a certain evaluative lens. Please be aware that reflection and awareness is brought to understanding social, cultural, and political relationships at the level of the host country. The research is conducted with an understanding of the variances in different societies and biases, assumptions, and judgements are addressed and neutralized with care and effort.

Benefits of the research: The benefits of the research include being part of a dialogue on revising the current United Nations' indicators to ensure they are inclusive of the challenges faced in post-conflict settings. Given the importance of ensuring the indicators are practical for all, this research has the potential to offer recommendations on how best to support states as they transition from conflict. Participants will receive a copy of the final report within 3 months of it being completed.

Voluntary participation and withdrawal: Your participation in the research is completely voluntary and you may choose to stop participating at any time. You may choose to refuse to answer particular questions. You may also choose to suggest another delegate from your organization who may be a better fit for the research study. The decision to stop participating will not affect your relationship with the researchers, Royal Roads University, your organization, or any other stakeholder associated with this project. If you choose to withdraw from this study, all associated data will be destroyed as immediately as possible.

Confidentiality: Interview documentation will have your organization's name, and your professional title. Your name will not be recorded. No other personal demographic information is collected. The data will be collected via electronic (typed) notes. The data will be password protected with the researcher and the research supervisor from Royal Roads University having access. The data will be stored securely. The data will be stored for 12 months, after which time it will be destroyed. Confidentiality will be provided to the fullest extent possible by law.

Questions about the Research?: If you have questions about the research in general, or your role in the study, please contact Megan Capp at: megan.capp@royalroads.ca or 604-996-0065. You may also contact Eva Malisius, Department Head, School of Conflict Analysis and Management at Royal Roads University at: eva.malisius@royalroads.ca or 250-391-2600. This research has been reviewed and approved by the Royal Roads University Research Ethics Board and conforms to the standards of the Canadian Tri-Council Research Ethics guidelines. If you have any questions or concerns about this process you may contact them at: colleen.hoppins@royalroads.ca. Do you have any questions before we proceed?

Legal Rights and Signatures: I _____ consent to participate in Evaluating the usefulness and practical applications of rule of law and security indicators in Post-Conflict Settings in accordance with the United Nations' framework for measuring progress towards Sustainable Development Goal 16 conducted by Megan Capp. I have understood the nature of this project and wish to participate. I am not waiving any of my legal rights by signing this form. My signature below indicates my consent.

Participant Signature: _____

Name: _____

Date: _____

Researcher Signature: _____

Name: _____

Date: _____