



2016 OSCE HUMAN DIMENSION SEMINAR

PROMOTING EFFECTIVE AND INTEGRAL JUSTICE SYSTEMS: HOW TO ENSURE THE
INDEPENDENCE
AND QUALITY OF THE JUDICIARY

Keynote Address

Dr. Juan Carlos Botero
Executive Director
The World Justice Project

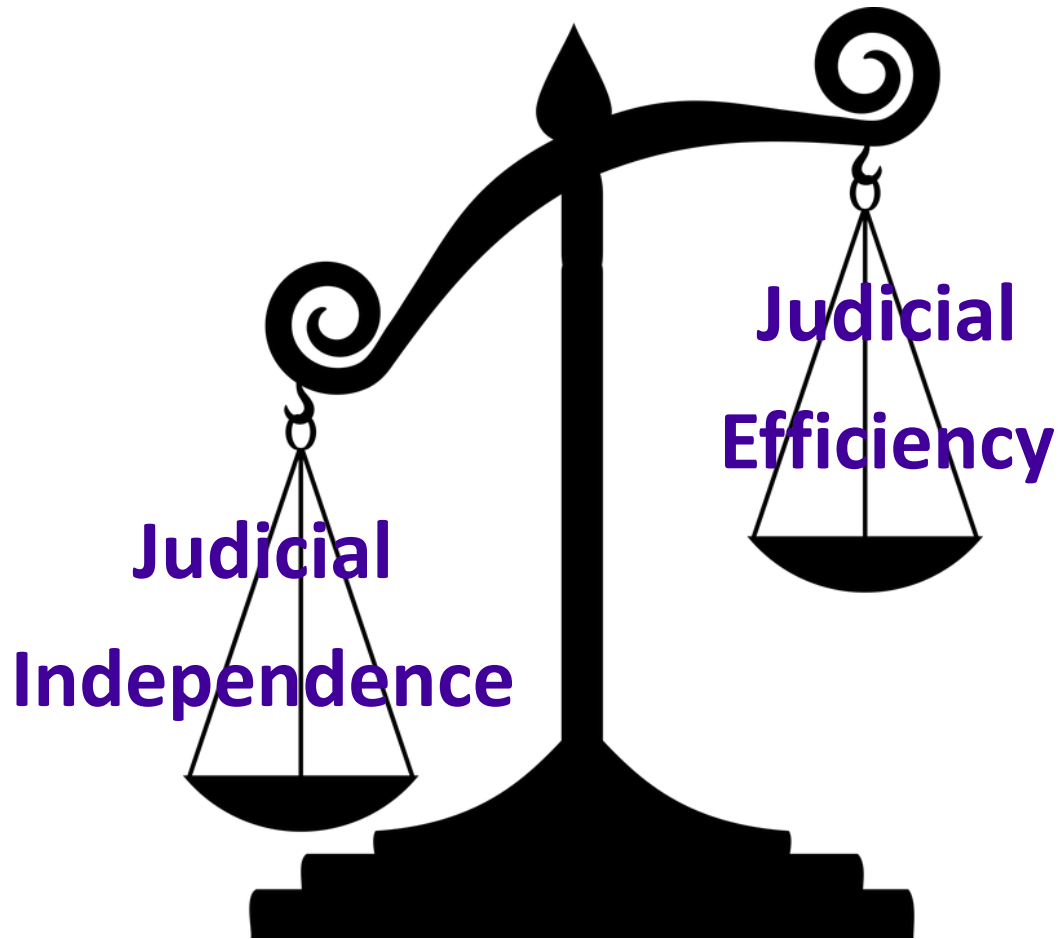
Warsaw, 21 November 2016

Four Ideas:

1. **Equilibrium** (or balance among competing social interests)
2. Justice as a **public service** (users' perspective; supply and demand)
3. **No quick fixes** (Respect for cultural differences)
4. **Data can help** to align incentives among multiple constituencies

20 years ago in Colombia... my first experience with judicial reform:

- Judicial Independence under 1991 Constitution
Important progress. However:
 - Supreme Council of the Judiciary: Justices deliberating in chambers and issuing formal “judgments” for simple procurement needs
 - Multiple “highest court of the land” overruling each other



**Judicial
Independence**

**Judicial
Efficiency**



NWAUTOSALON.COM



Engine power: 100%

Safety standards: 100%

Comfort: 100%

Average speed: 0 KPM

Overall effectiveness: 0% (a very expensive and bulky piece of furniture)



Difficulties for judicial reform:

- Multiple and partially contradicting “social goals”
- Multiple actors and constituencies = Not ONE owner = Requires collective action
- Diverging interests and incentives among multiple actors



“(I was called) to bring about the rule of righteousness in the land . . . so that the strong should not harm the weak.”

Prologue, *Hammurabi's Code*

(1772 BCE)

“If someone disobeys the law, even if he is (otherwise) worthy, he must be punished. If someone meets the standard, even if he is (otherwise) unworthy, he must be found innocent. Thus the Way of the public good will be opened up, and that of private interest will be blocked.”

The Huainanzi

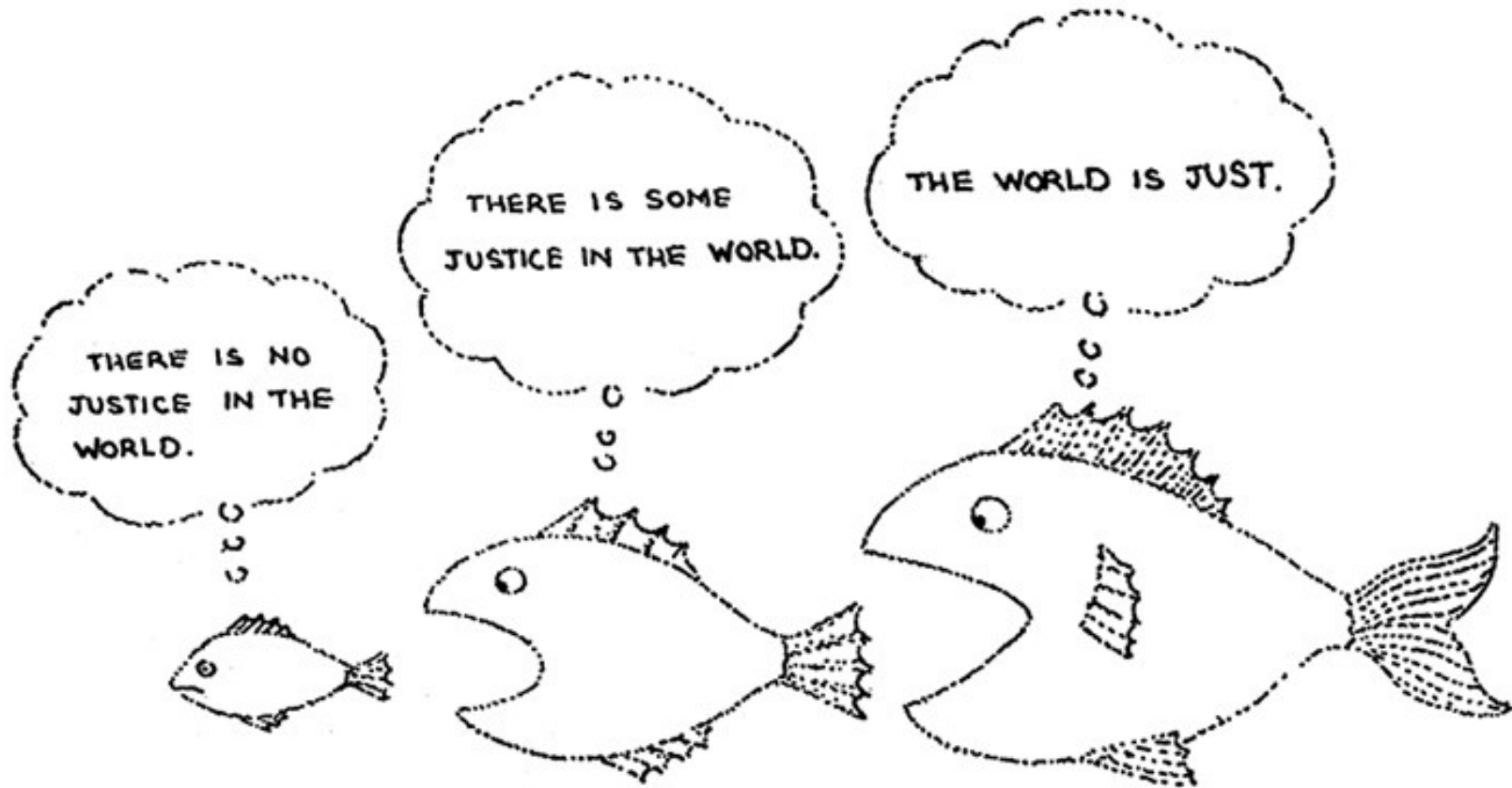
139 BCE (Han Dynasty, China)

“Treat the people equally in your court and give them equal attention, so that the noble shall not aspire to your partiality, nor the humble despair of your justice.”

Judicial Guidelines from ‘Umar Bin Al-Khattab
the Second Khalifa of Islam

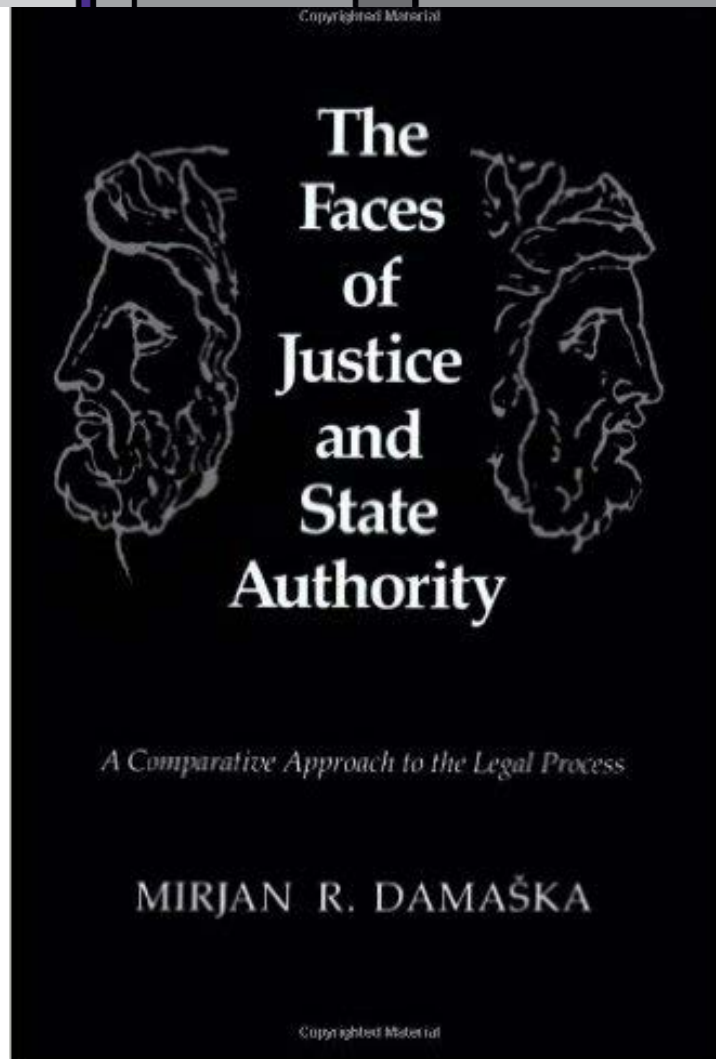
“No freeman is to be taken or imprisoned or disseised of his free tenement or of his liberties or free customs, or outlawed or exiled or in any way ruined, nor will we go against such a man or send against him save by lawful judgement of his peers or by the law of the land. To no-one will we sell or deny or delay right or justice.”

The Magna Carta



MANKOFF

Conflict-
solving
Justice



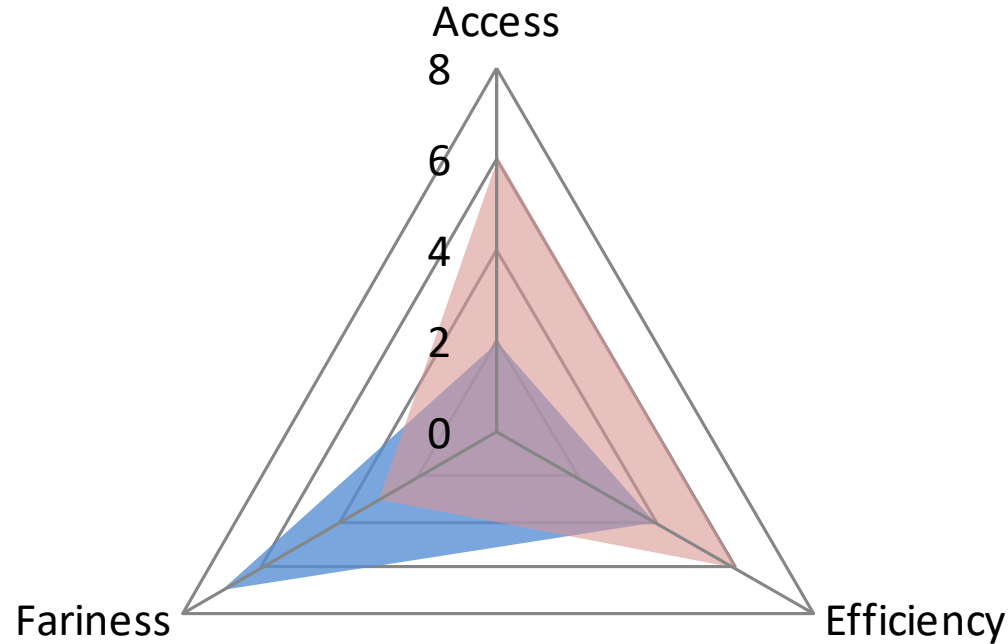
Policy-
implementing
Justice

Civil-law and Common-law traditions

Comparative law literature and empirical evidence:

- Civil-law and common-law traditions seem to have achieved different equilibriums.
- In the common-law tradition “justice” means “fair play,” the judicial process is a contest, and the judge is an umpire. The function of the common-law judge is to guarantee an **efficient and fair process**. In contrast, the function of the civil-law judge is to ensure a **fair outcome**.
- In civil-law countries procedural and substantive safeguards tend to restrict judicial efficiency to protect the weaker party in the dispute. In common-law countries, conversely, the guarantee of procedural fairness relies heavily on judicial discretion (and substantive fairness partly relies on efficient markets).

Landlord-tenant dispute in New Zealand and Japan



Balance:

Access



Efficiency

Independence



Efficiency

Procedural fairness



Efficiency

Independence

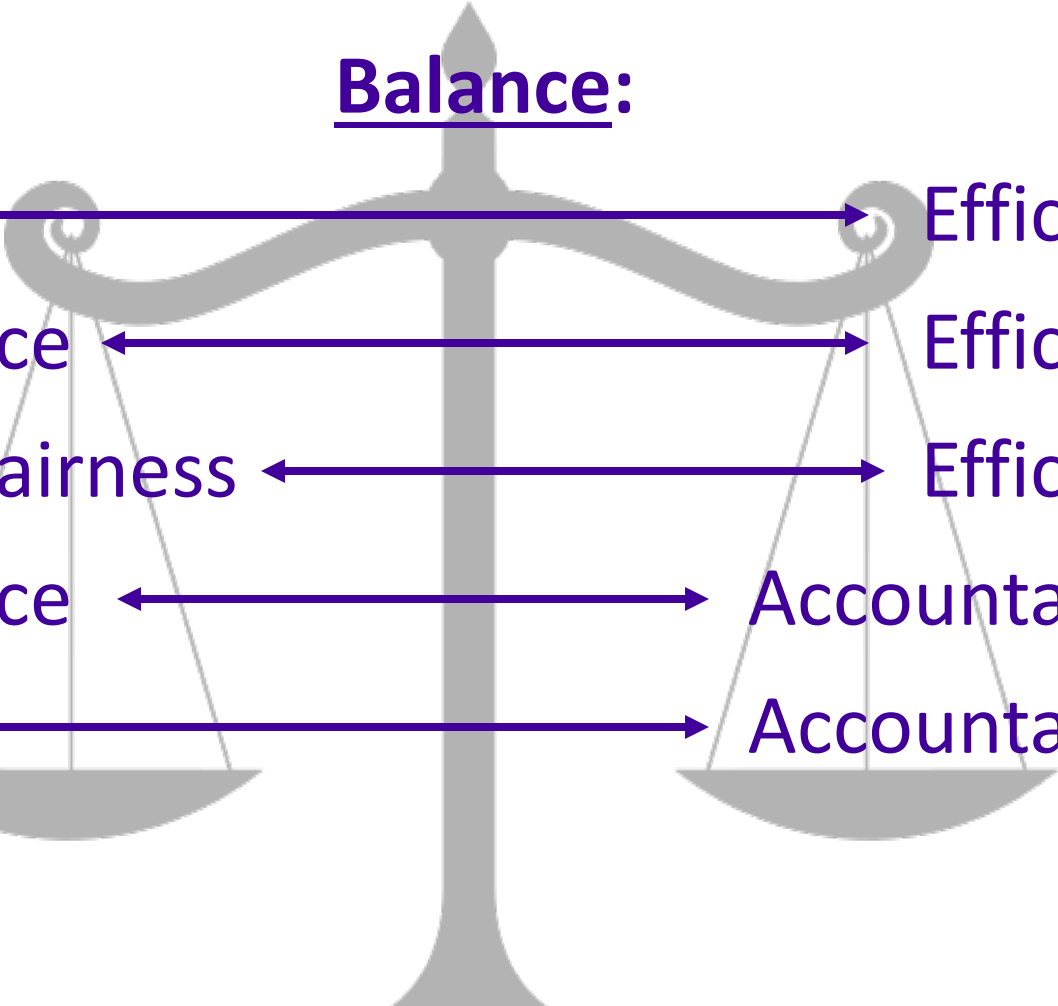


Accountability

Efficiency



Accountability



Multiple goals of the delivery of Justice:

- To protect the weak
- To prevent violence and vengeance
- To ensure community harmony
- To implement State Policy
- To prevent tyranny: checks and balances among branches of government



Balance:



Resolving individual disputes in society:

- ✓ Legal action as the substitute for injustice (protecting the weak, delivering distributive Justice)
- ✓ Legal action as the substitute for private or collective vengeance (community harmony)

Achieving broader social goals:

- ✓ Ensuring “effectiveness of the law” (J.A. Jolowicz)
- ✓ Implementing State Policy
- ✓ Prevent tyranny: Checks and balances among branches of government

Multiple actors and constituencies = Not ONE owner of the problem:

- Chief Justice
- Multiple highest courts
- Minister of Justice
- President/Prime Minister
- Minister of Finance
- Legislature
- Judges
- Court personnel
- Lawyers
- Civil society
- Ombudsperson and control organisms
- Media
- Powerful private interests

Difficulties for judicial reform:

- Multiple and partially contradicting “social goals”
- Multiple actors and constituencies = Not ONE owner = Requires collective action
- Diverging interests and incentives among multiple actors

How to ensure the independence and quality of the judiciary?

1. Expressly recognize competing social interests and seek balance among them
2. Approach Justice as a Public Service (take users' perspective; consider both the supply and demand aspects of the equation)
3. Use reliable data to align incentives among multiple constituencies
4. Take into account cultural differences and avoid pro-forma, one-size-fits-all solutions



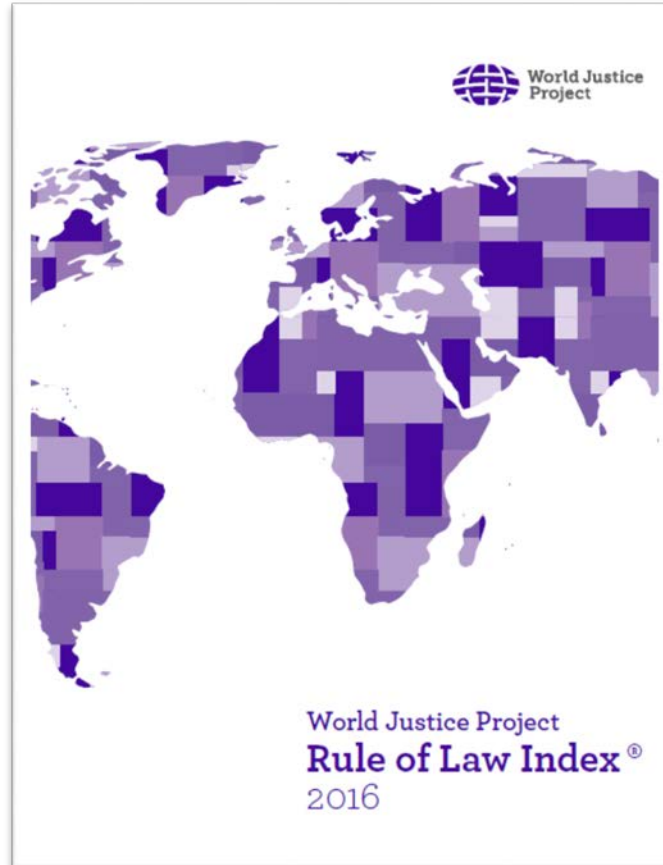
The judicial Equilibrium:

- Fairness (independent and impartial adjudication)
- Efficiency (enforceable results within reasonable time)
- Access (absence of procedural, financial and other unreasonable hurdles)
- Accountability

Determinants of judicial independence, quality and accountability

- System of incentives: Selection, discipline and dismissal of judges, court personnel and other actors
- Judicial administration and judicial independence
- Kyiv Recommendations

WJP Rule of Law Index 2016



Measurement Approach

- 1 Perspective of the ordinary person
- 2 Two sources of data:
 - **Household surveys** : Probability sample, 1,000 respondents per country, three largest cities
 - **Expert questionnaires**: Civil and commercial law, criminal justice, labor law and public health
- 3 Outcomes, not inputs; **rule of law in practice - not on the books**
- 4 Perception and experience
- 5 8 years of development – 5th report



Statistical Tests on the WJP Rule of Law Index 2011, 2012, 2014



- In summary, “the JRC analysis suggests that the conceptualized multi-level structure of the WJP Rule of Law Index is statistically coherent and no dimension is dominated by any of its underlying components. Country ranks across the eight dimensions are also fairly robust to methodological changes related to the estimation of missing data, weight, or aggregation rule (less than ± 1 position shift in 90% of all cases).”
- Saisana, M., and Saltelli, A., ‘*Statistical Tests on the WJP Rule of Law Index 2011*’. http://worldjusticeproject.org/sites/default/files/jrcaudit_wjpindex2011.pdf
- Saisana, M., and Saltelli, A., ‘Rankings and Ratings: Instructions for Use’, *Hague Journal on the Rule of Law*, 2011, Volume 3, Issue 2. <http://journals.cambridge.org/action/displayIssue?decade=2010&jid=ROL&volumeId=3&issueId=02&iid=8394462#>

Acknowledge limitations

Concept

(different value structures, legal architectures, goals, and trade offs)

Measurement

(cross-cultural issues, sensitive questions, measurement error, urban sampling)

Scope

(10,000 feet picture, limited use for analysis, limited context)

Bosnia & Herzegovina

Region: Eastern Europe & Central Asia

Income Group: Upper Middle Income

Section 2

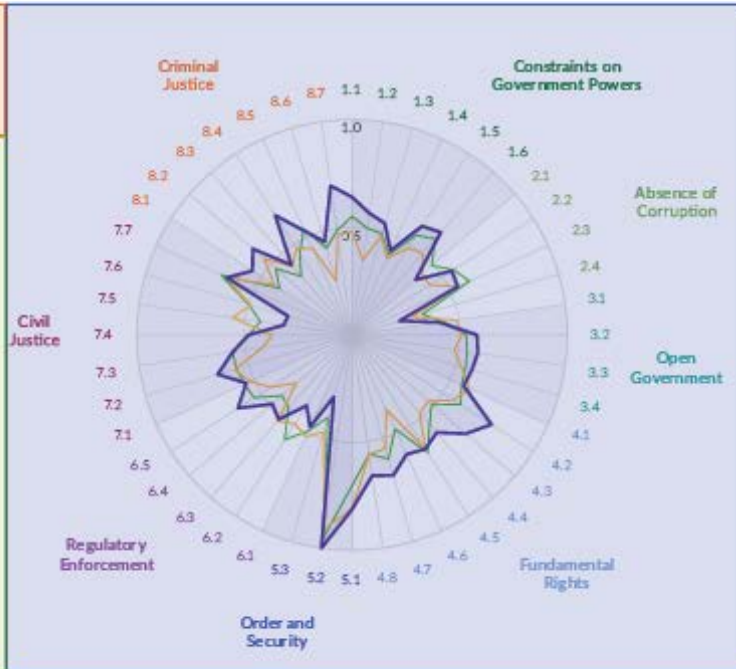
Overall Score	Regional Rank	Income Rank	Global Rank
0.56	2/13	12/37	50/113

Section 3

Factor	Trend	Factor Score	Regional Rank	Income Rank	Global Rank
Constraints on Government Powers	—	0.57	2/13	12/37	55/113
Absence of Corruption	—	0.43	6/13	26/37	72/113
Open Government	—	0.54	7/13	16/37	53/113
Fundamental Rights	—	0.65	2/13	9/37	42/113
Order & Security	—	0.70	10/13	18/37	63/113
Regulatory Enforcement	—	0.50	4/13	19/37	59/113
Civil Justice	—	0.50	7/13	24/37	69/113
Criminal Justice	—	0.56	2/13	7/37	39/113

High Low ▼ Trending down ▲ Trending up

Section 1



Bosnia & Herzegovina Eastern Europe & Central Asia Upper Middle Income

Constraints on Government Powers

1.1 Limits by legislature 0.64

1.2 Limits by judiciary 0.57

Fundamental Rights

4.1 Equal treatment / no discrimination 0.57

4.2 Right to life and security 0.77

Civil Justice

7.1 Accessibility and affordability 0.54

7.2 No discrimination 0.65

Section 4



500

Questions

113

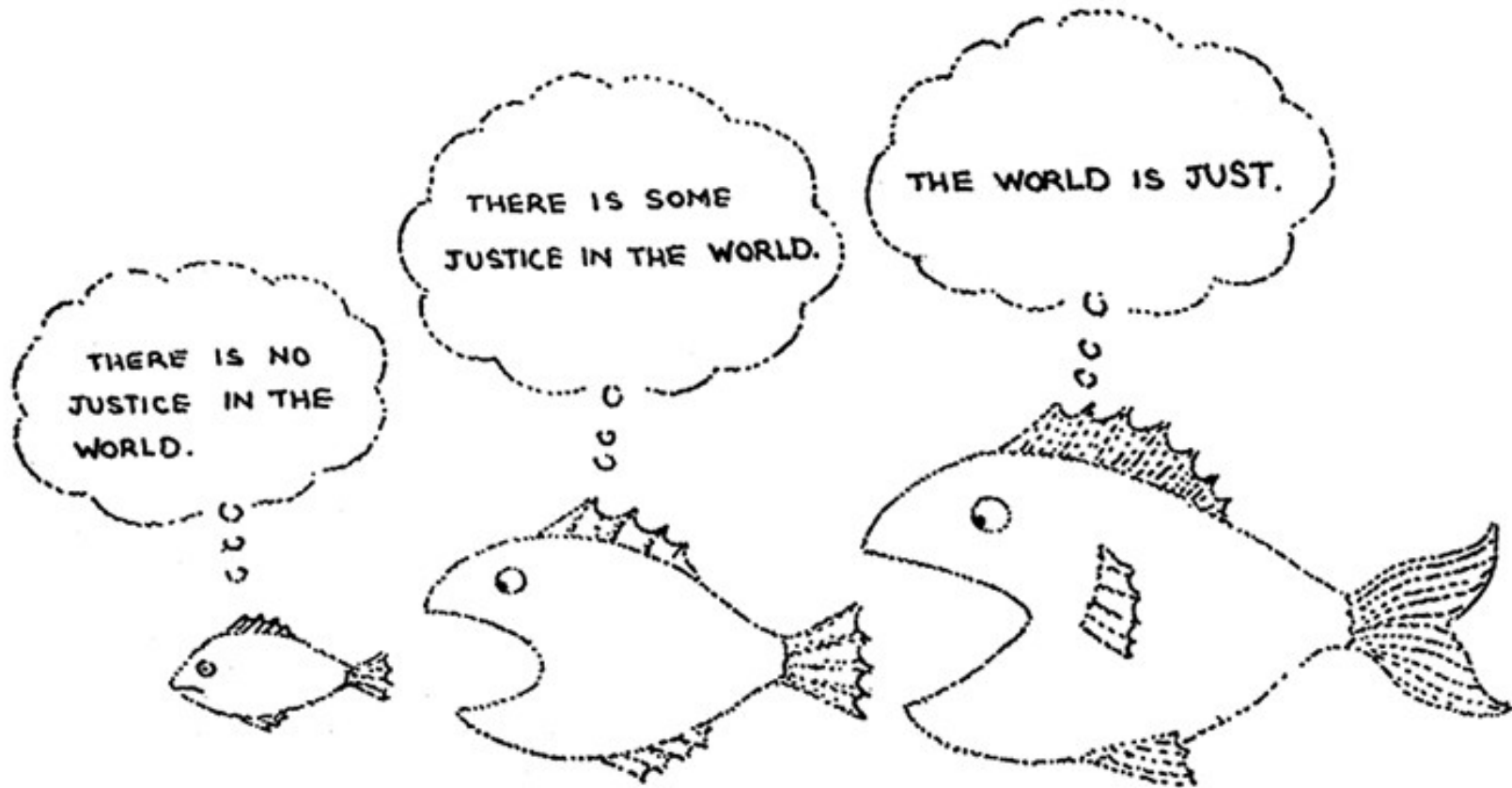
Countries

260,000

Households Surveyed

6,000

Experts Interviewed



MANKOFF











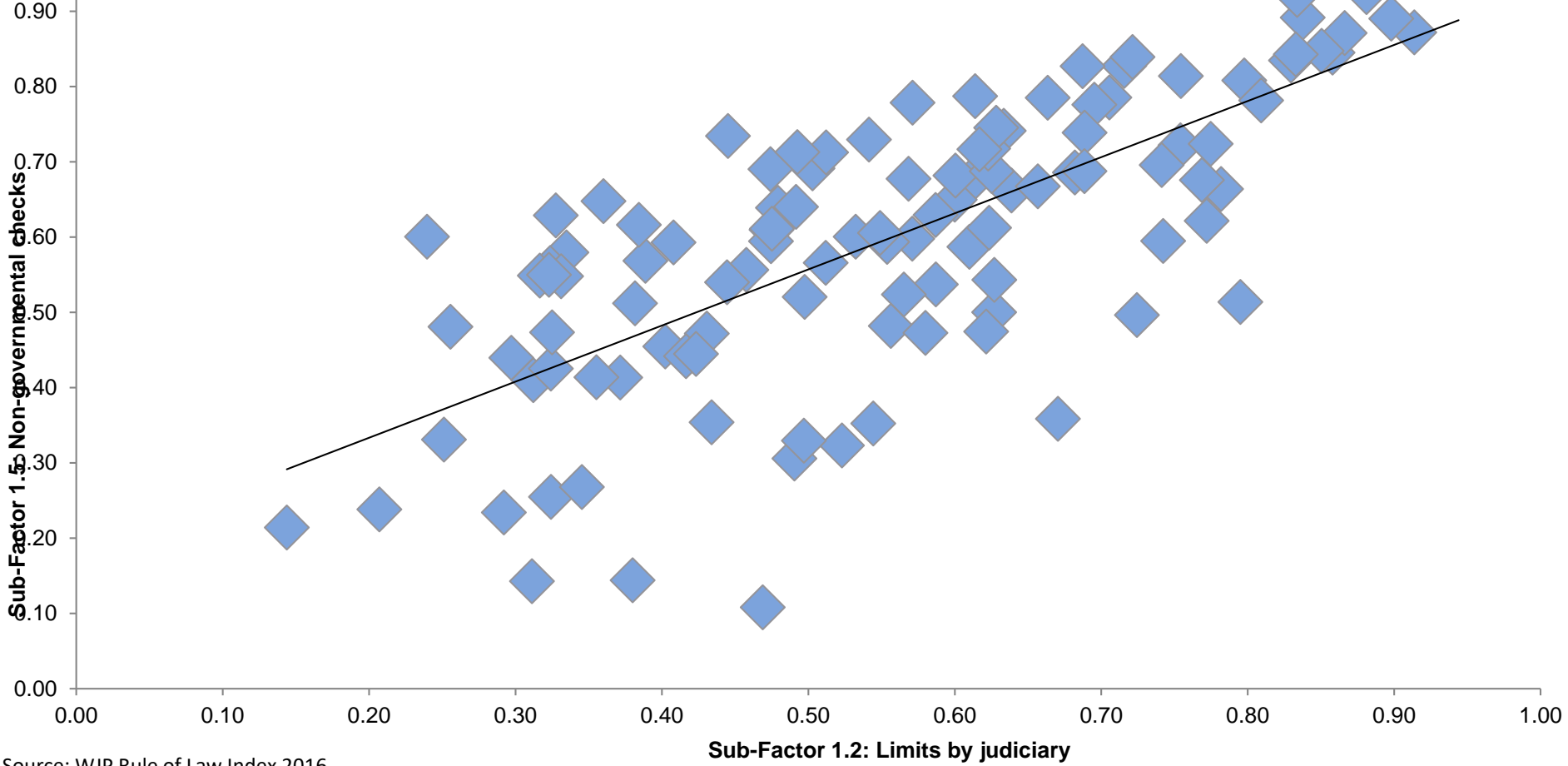






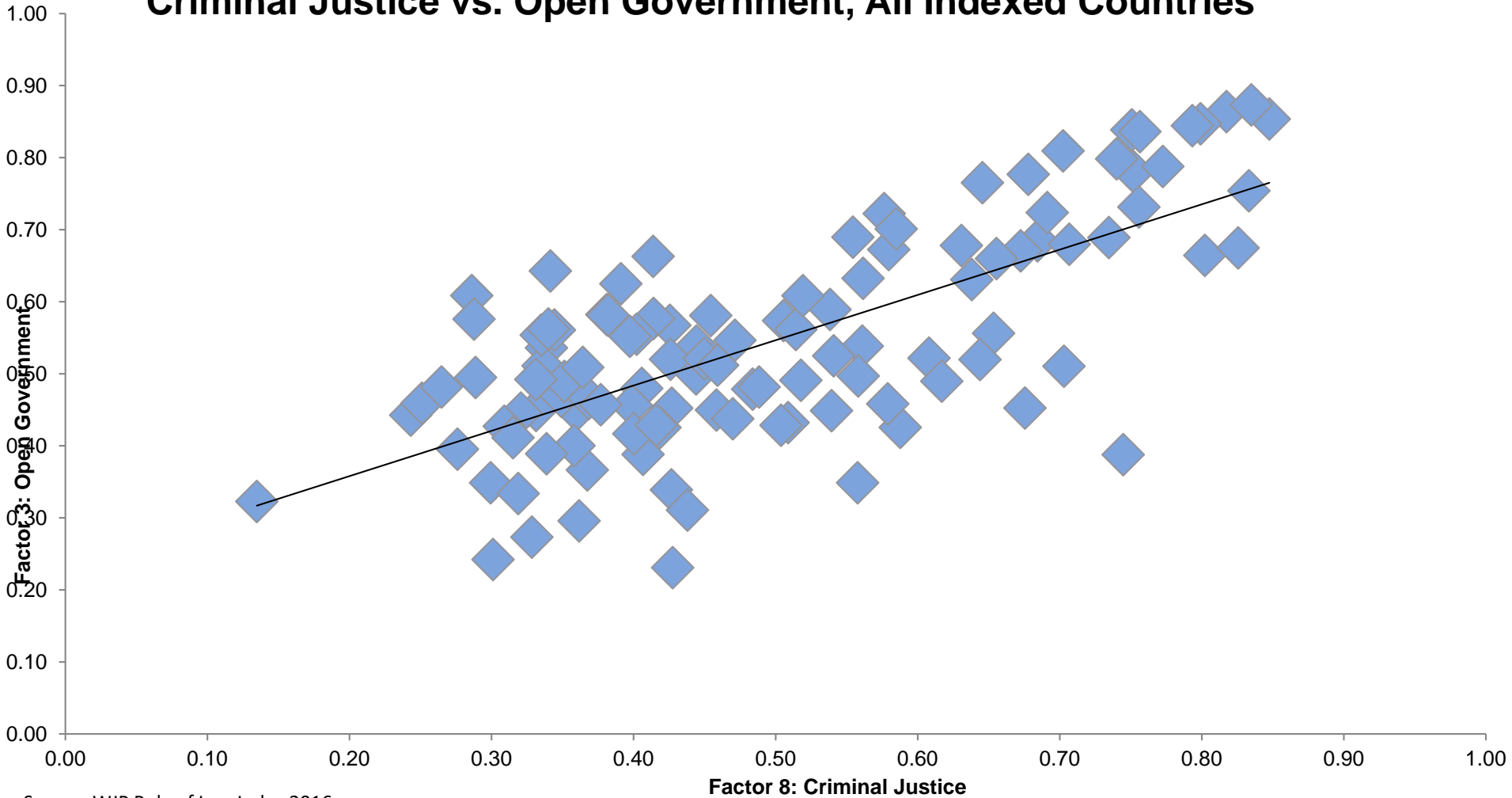


Limits by judiciary vs. Non-governmental checks, All Indexed Countries

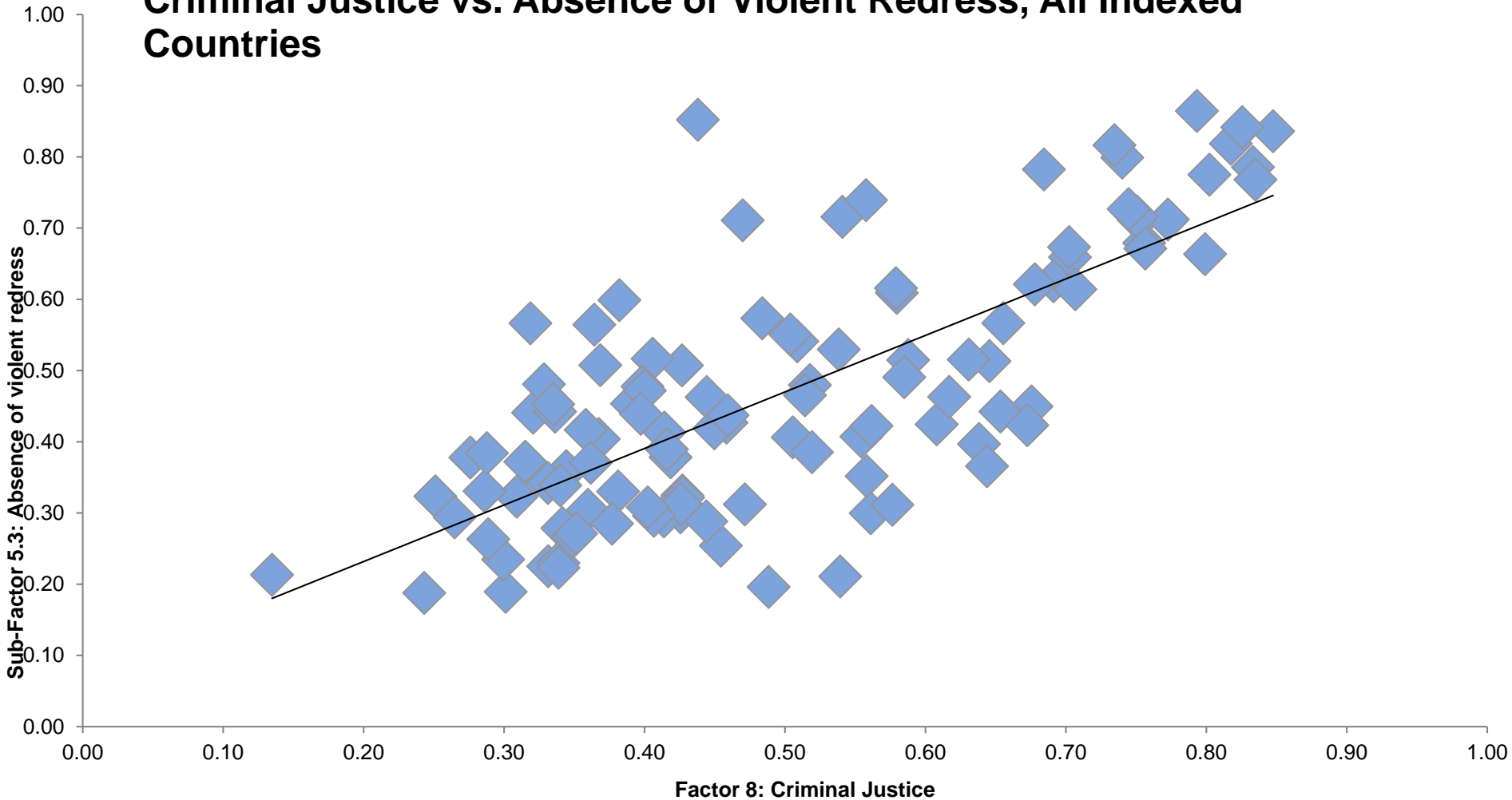


Source: WJP Rule of Law Index 2016

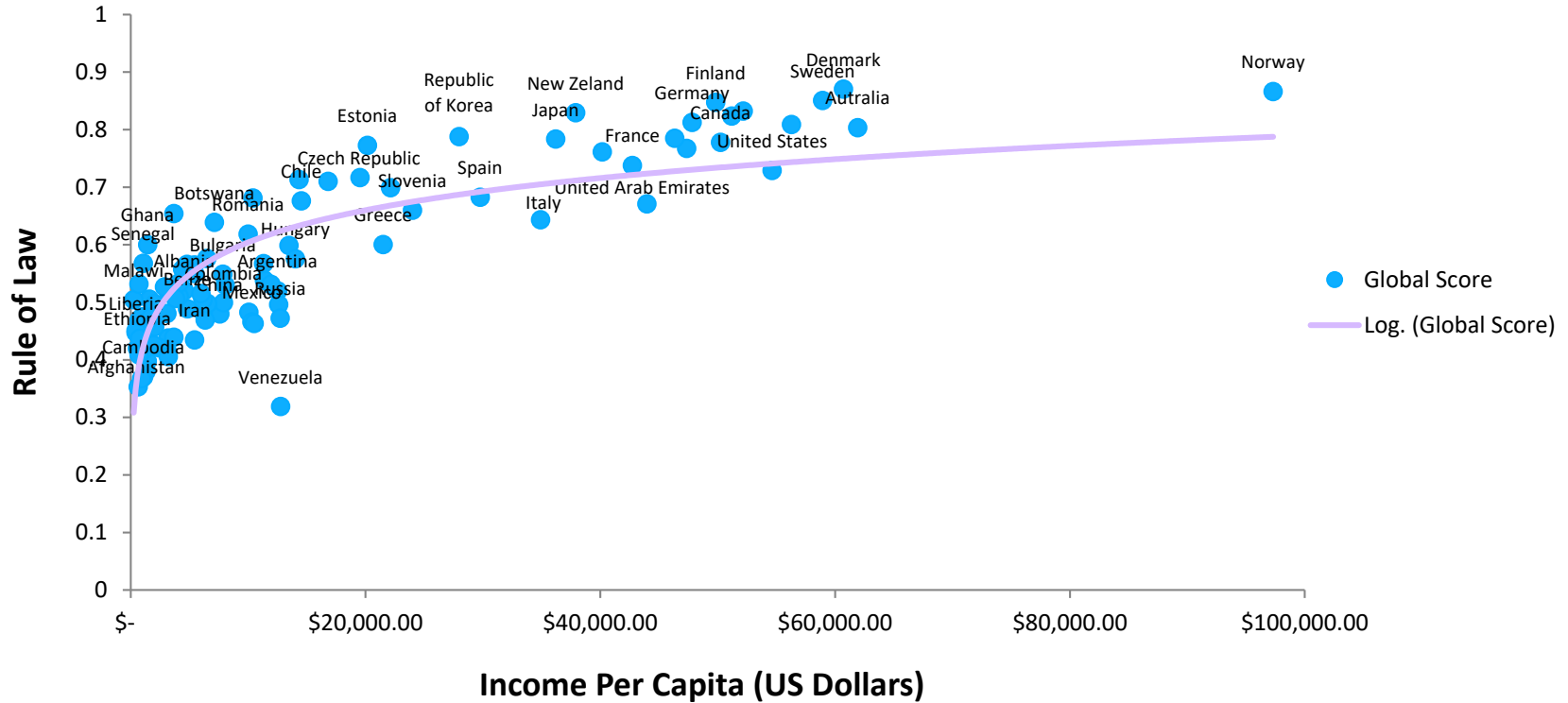
Criminal Justice vs. Open Government, All Indexed Countries



Criminal Justice vs. Absence of Violent Redress, All Indexed Countries



Economic Development

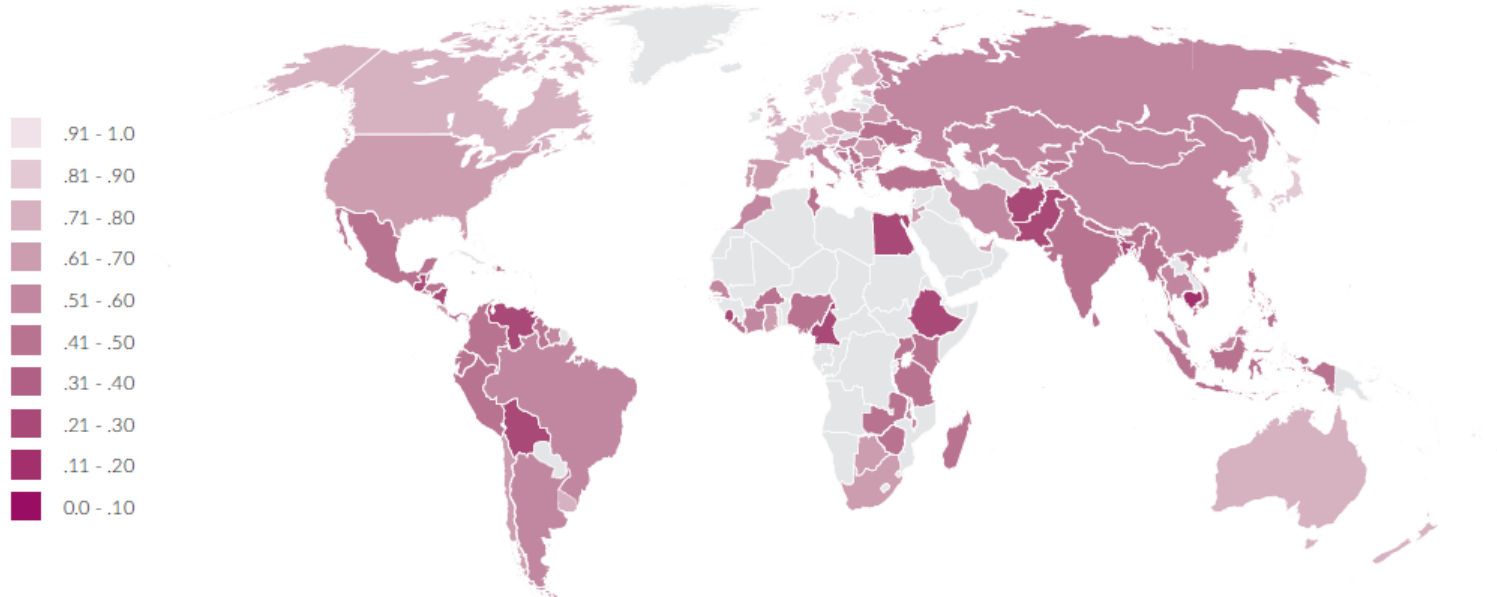


Factor 7: Civil Justice



Factor 7 measures whether civil justice systems are accessible and affordable, free of discrimination, corruption, and improper influence by public officials. It examines whether court proceedings are conducted without unreasonable delays, and if decisions are enforced

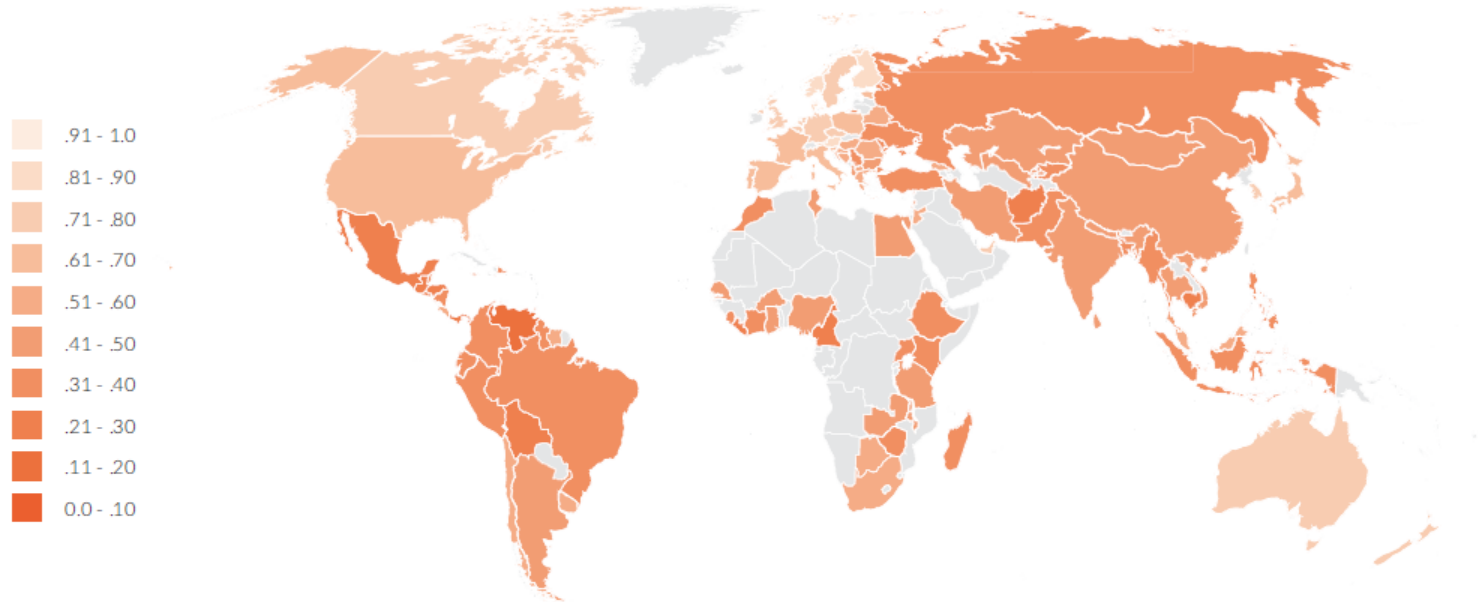
effectively. It also measures the accessibility, impartiality, and effectiveness of alternative dispute resolution mechanisms.



Factor 8: Criminal Justice

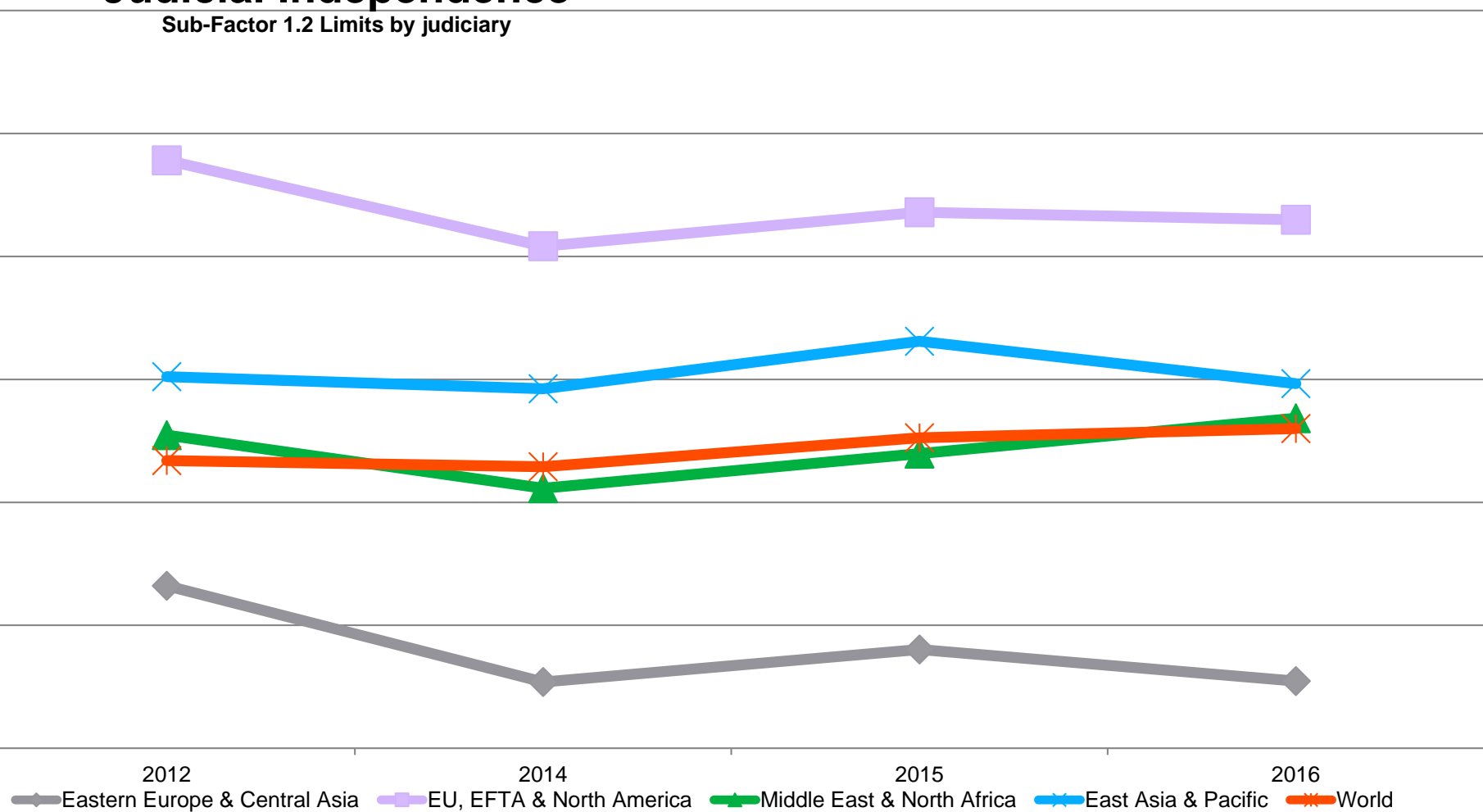


Factor 8 measures whether the criminal investigation, adjudication, and correctional systems are effective, and whether the criminal justice system is impartial, free of corruption, free of improper influence, and protective of due process and the rights of the accused.

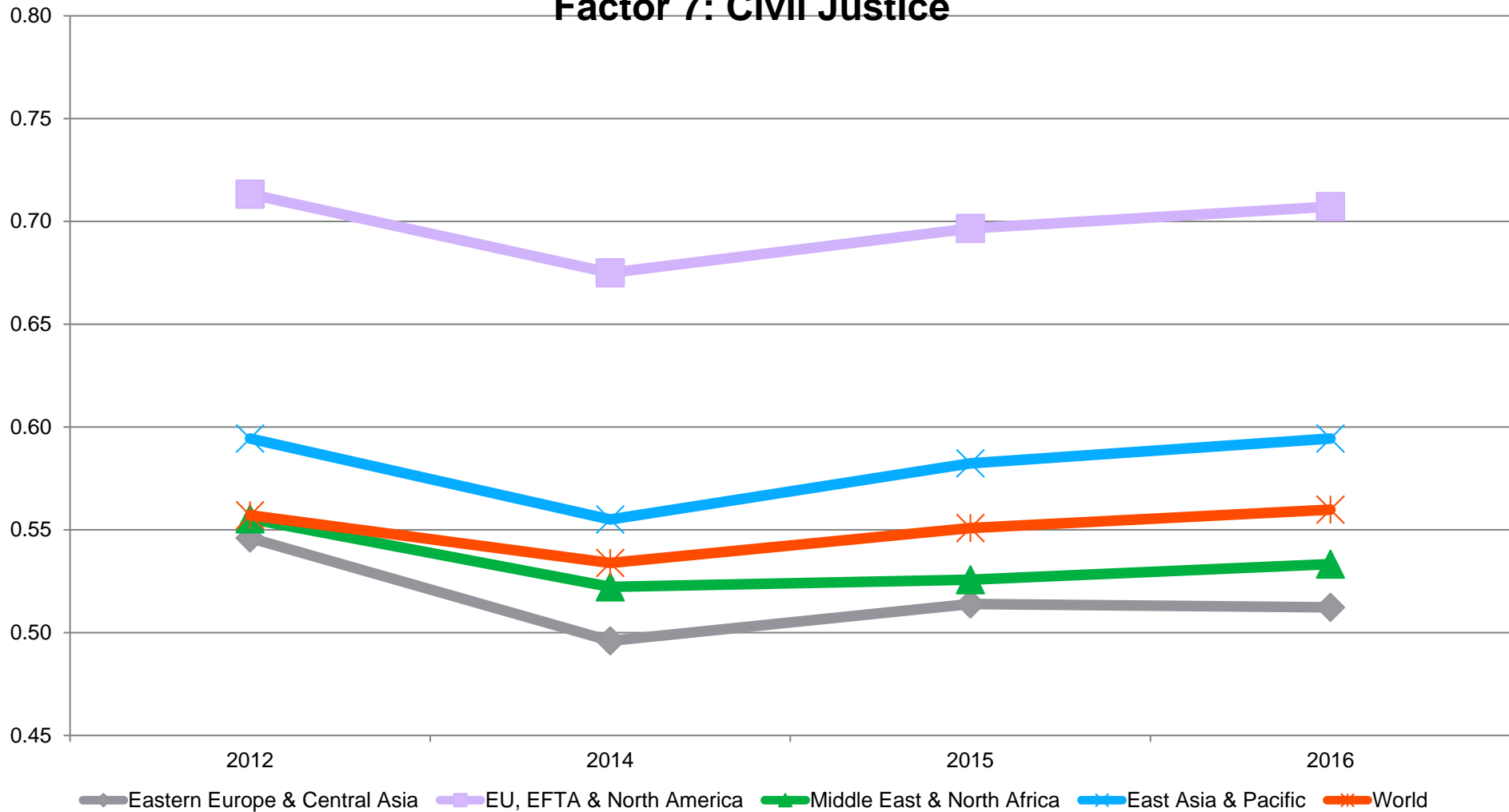


Judicial Independence

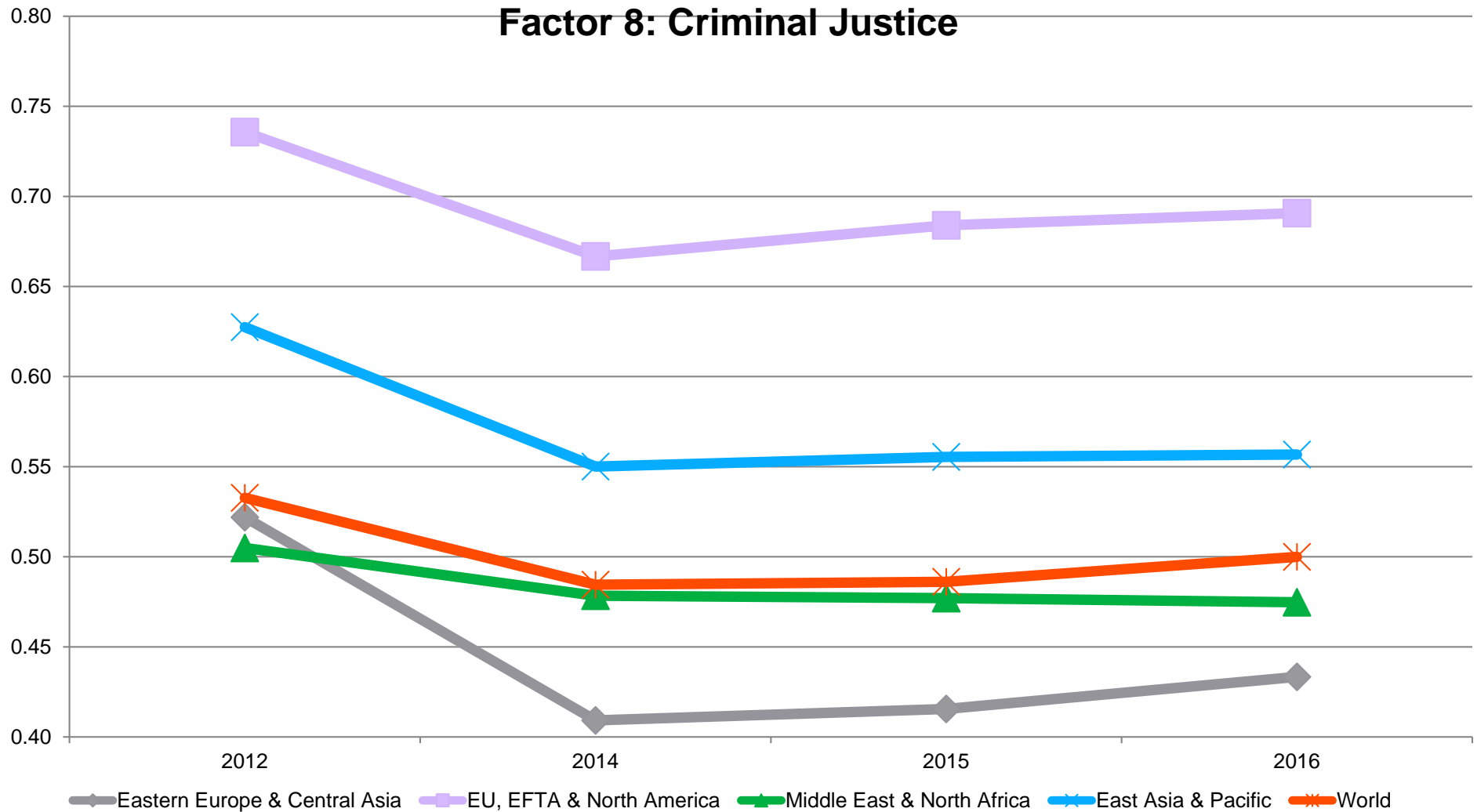
Sub-Factor 1.2 Limits by judiciary



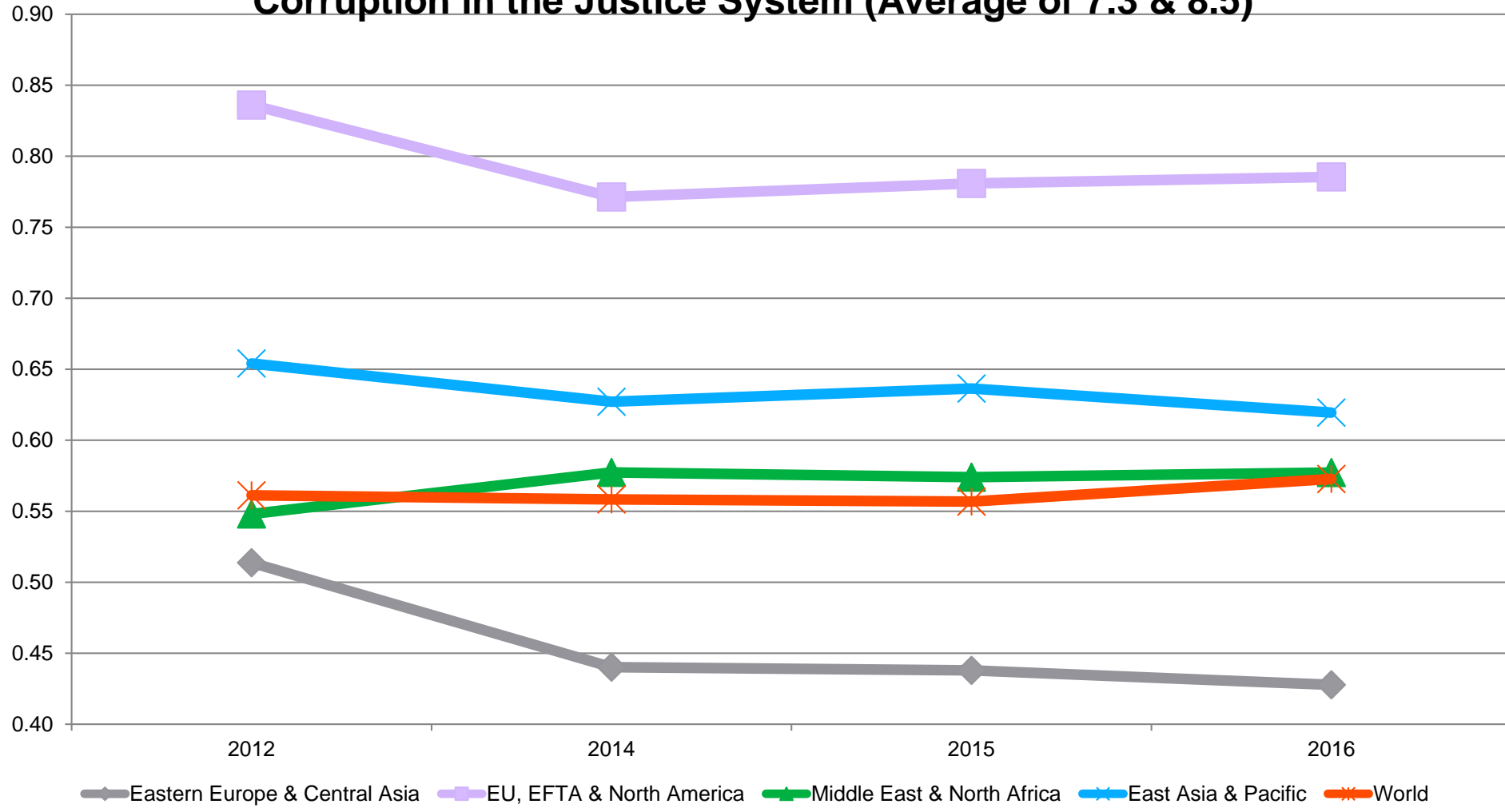
Factor 7: Civil Justice



Factor 8: Criminal Justice

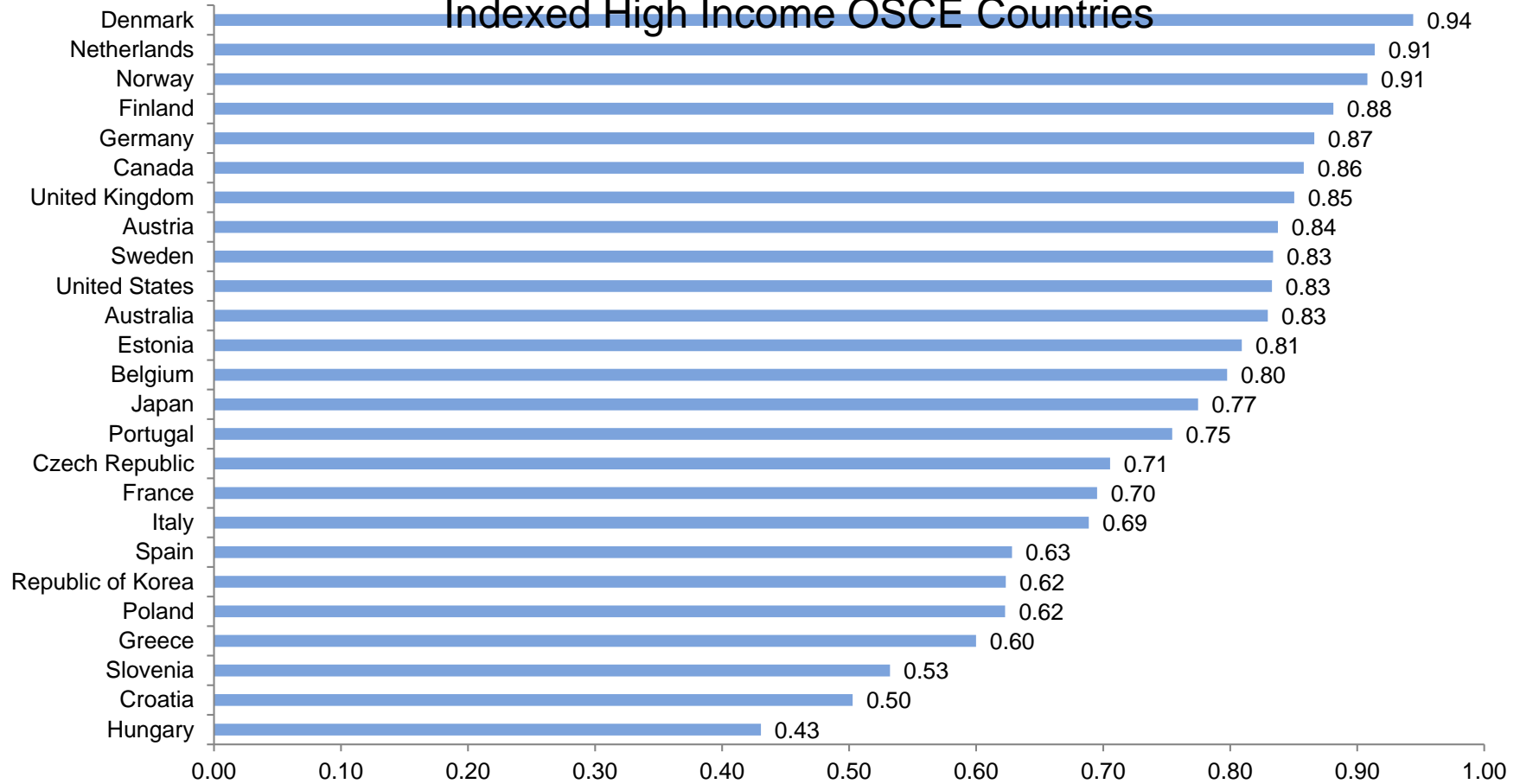


Corruption in the Justice System (Average of 7.3 & 8.5)

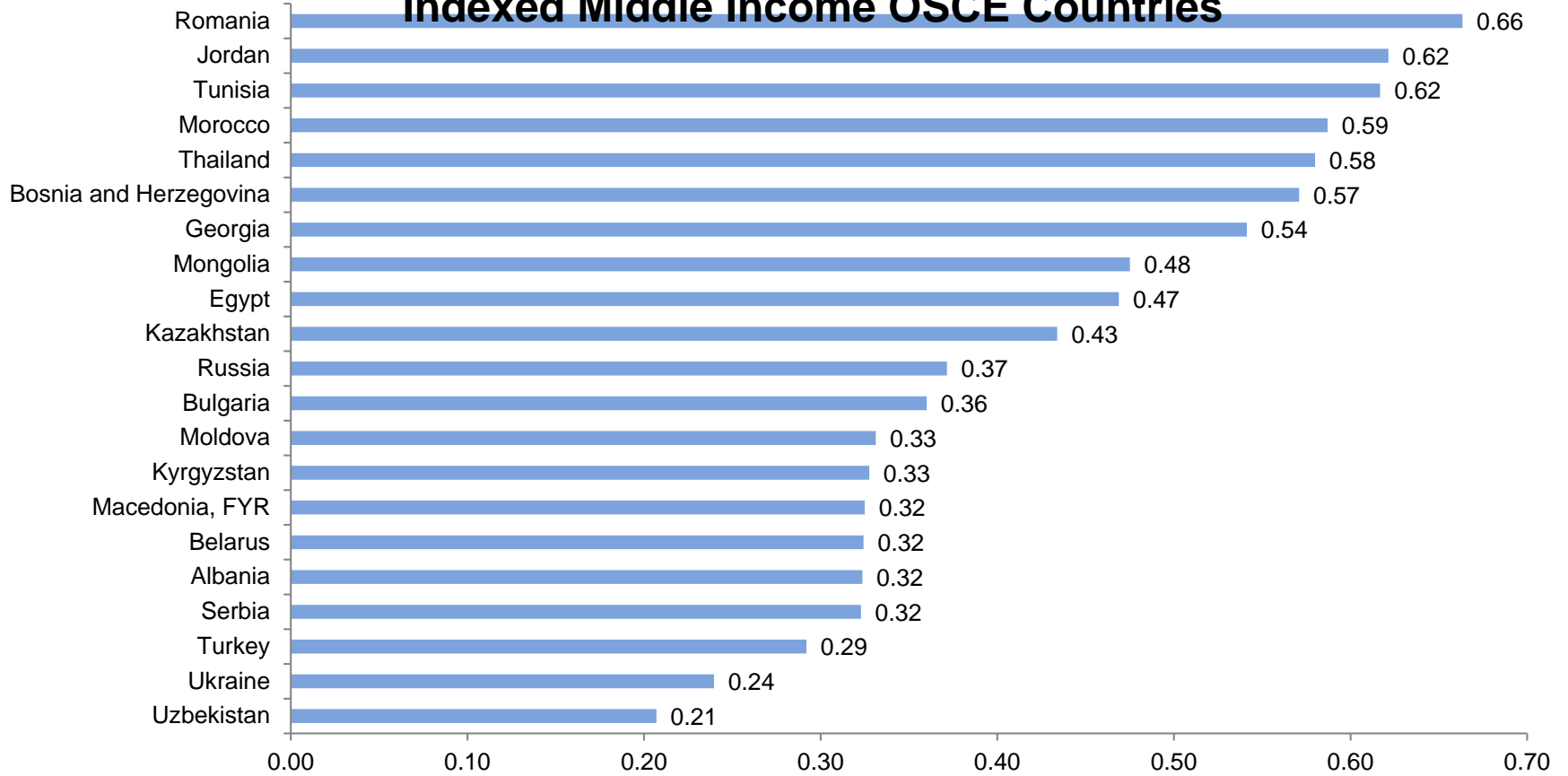


Sub-factor 1.2: Judicial Independence

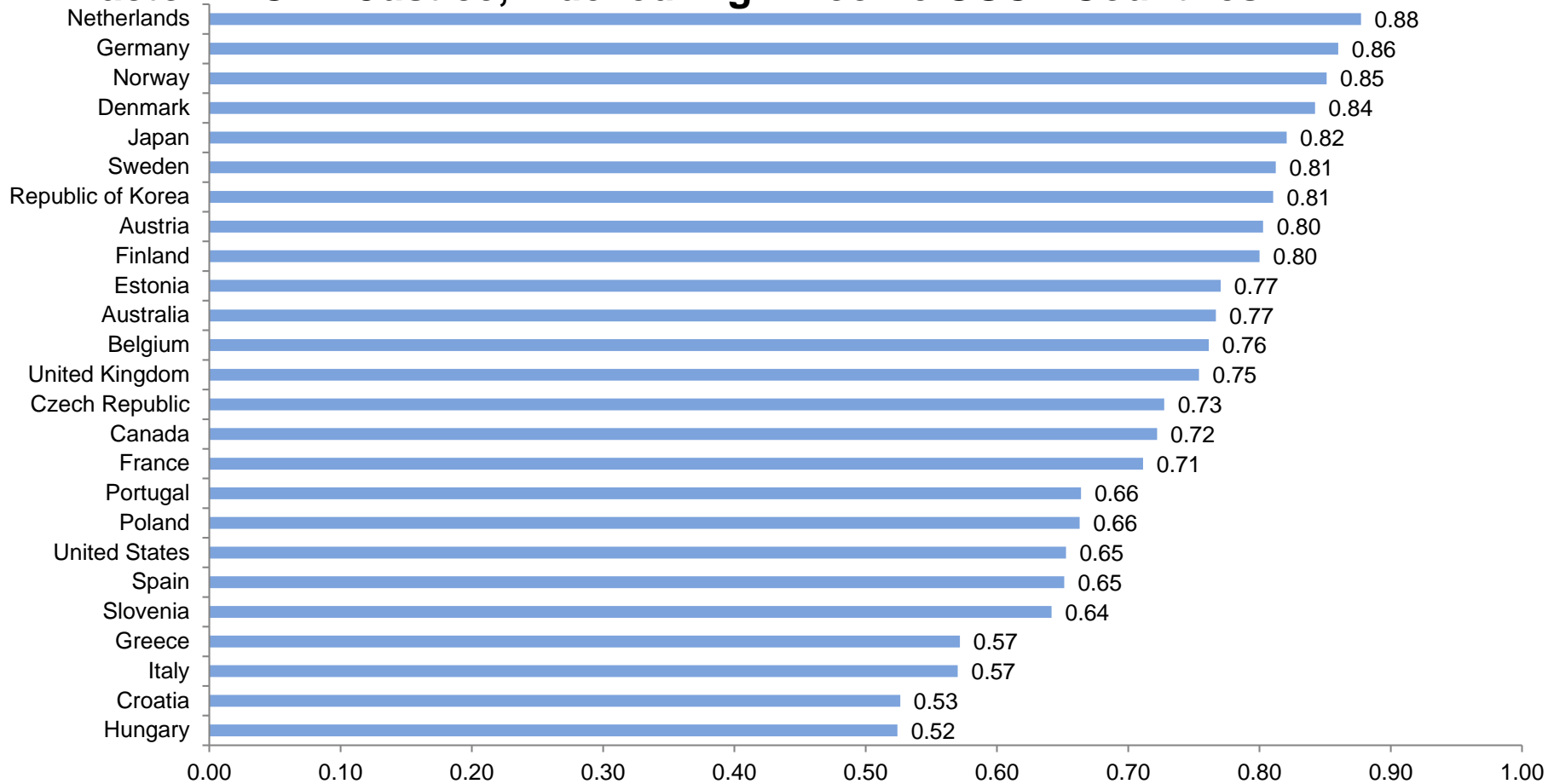
Indexed High Income OSCE Countries



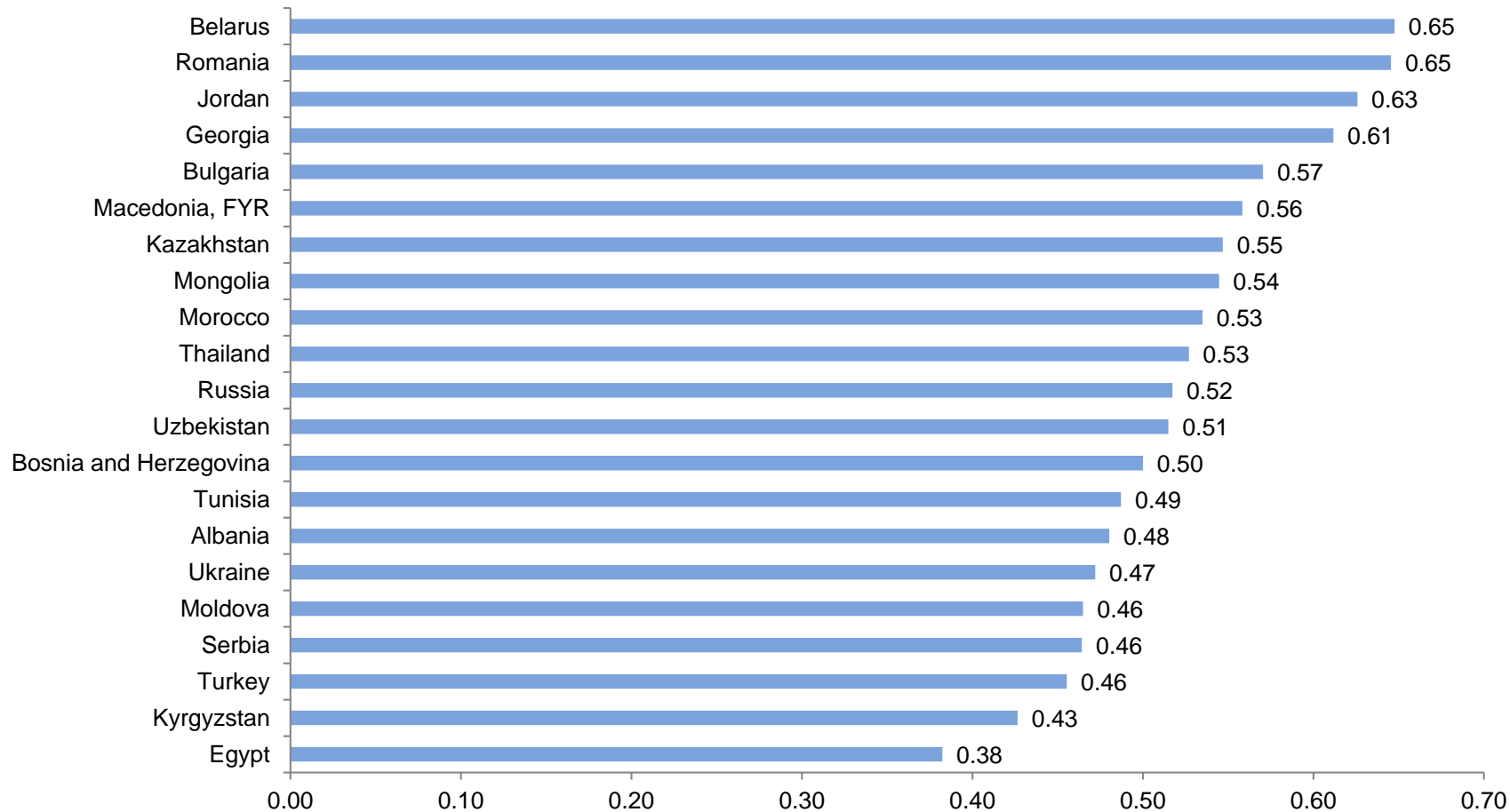
Sub-factor 1.2: Judicial Independence Indexed Middle Income OSCE Countries



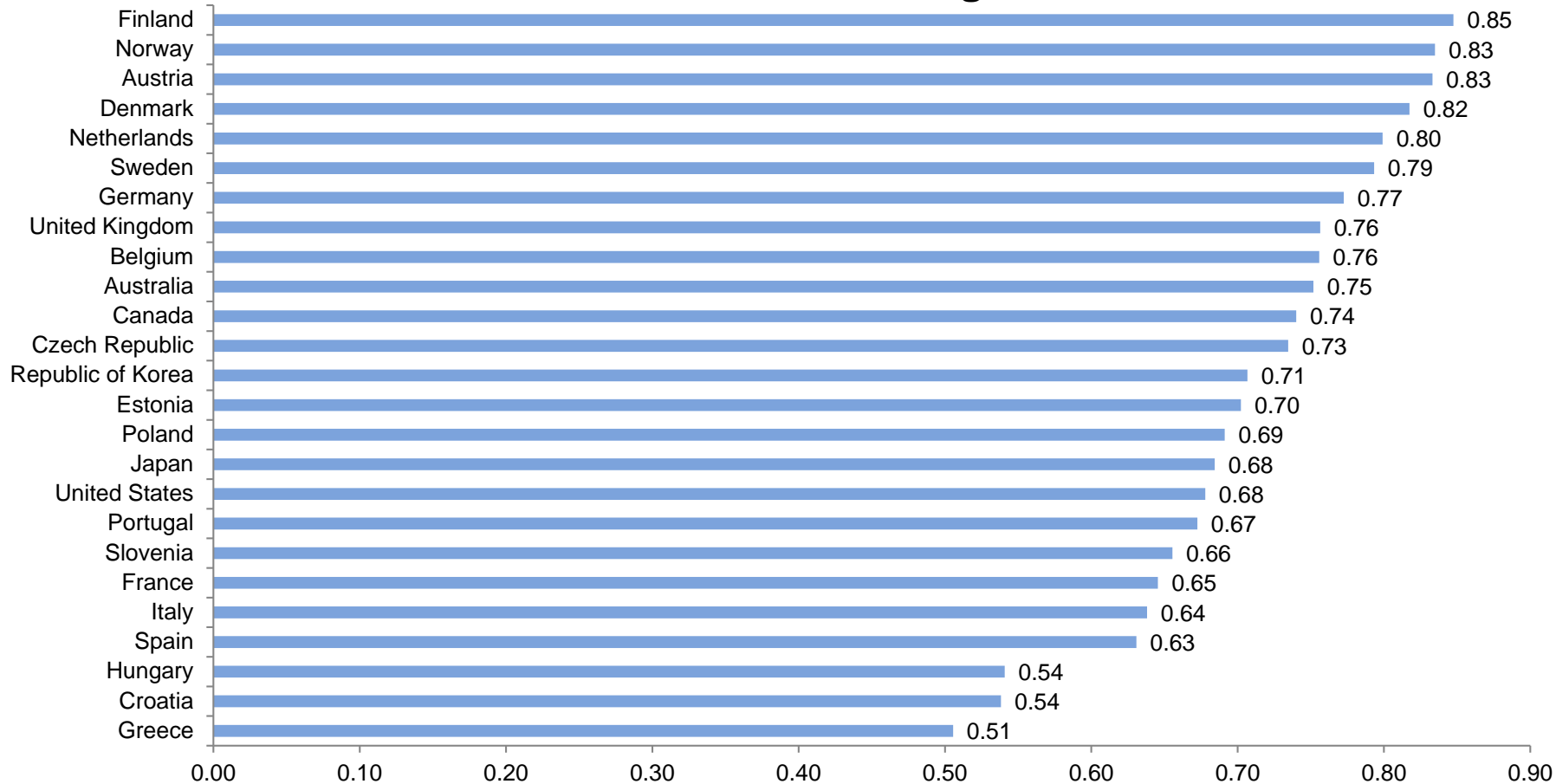
Factor 7: Civil Justice, Indexed High Income OSCE Countries



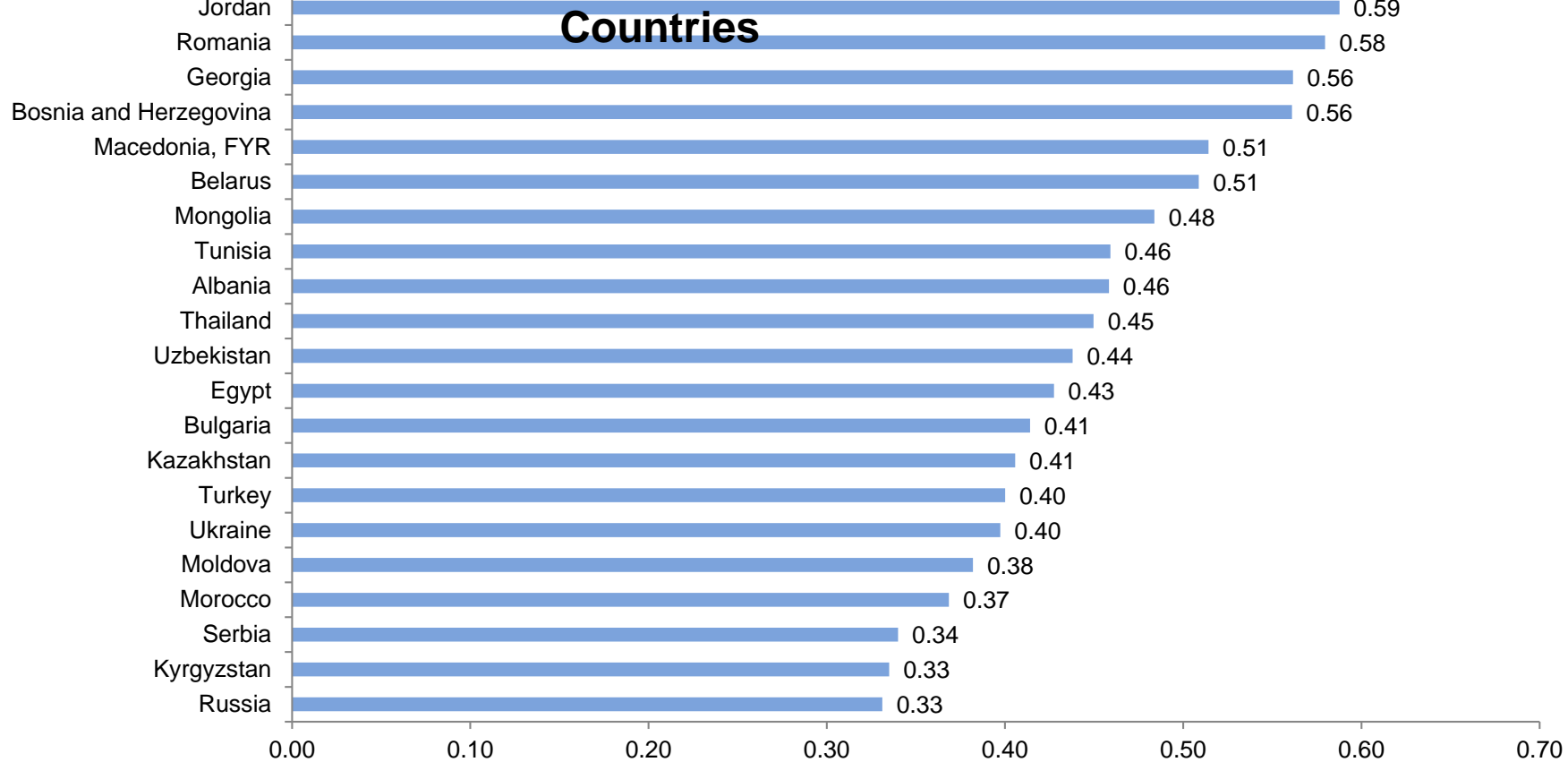
Factor 7: Civil Justice, Indexed OSCE Middle Income Countries



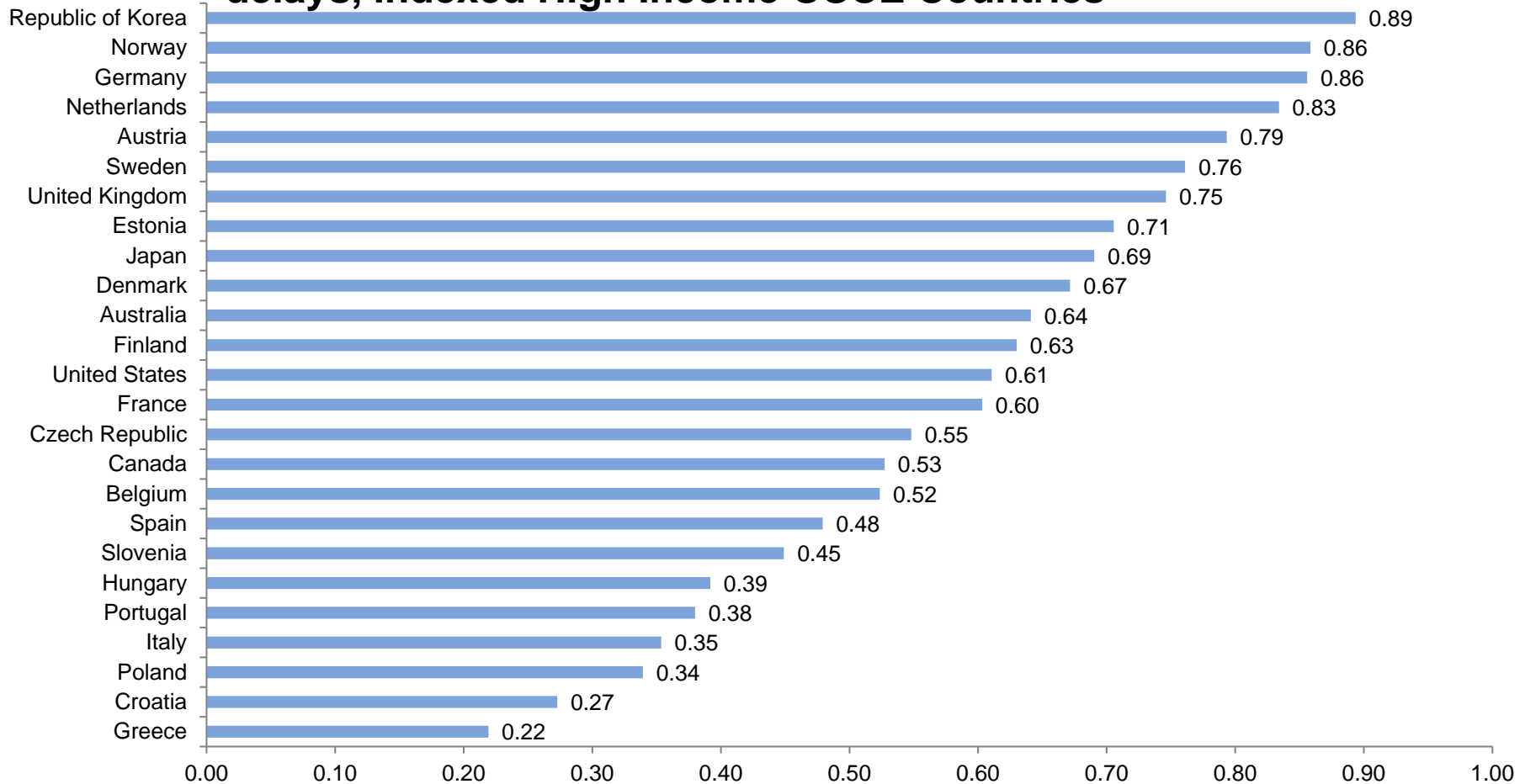
Factor 8: Criminal Justice, Indexed OSCE High Income Countries



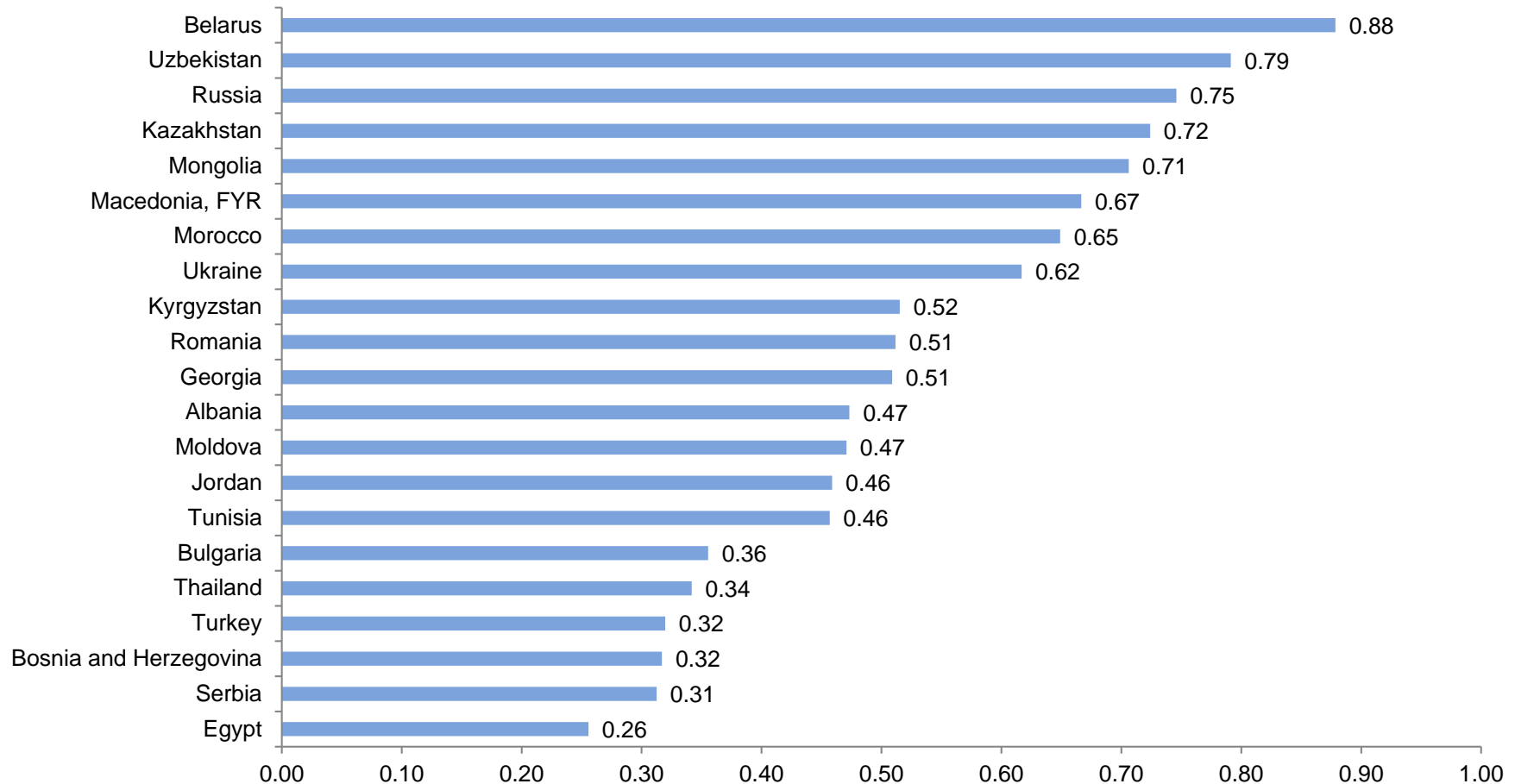
Factor 8: Criminal Justice, Indexed OSCE Middle Income



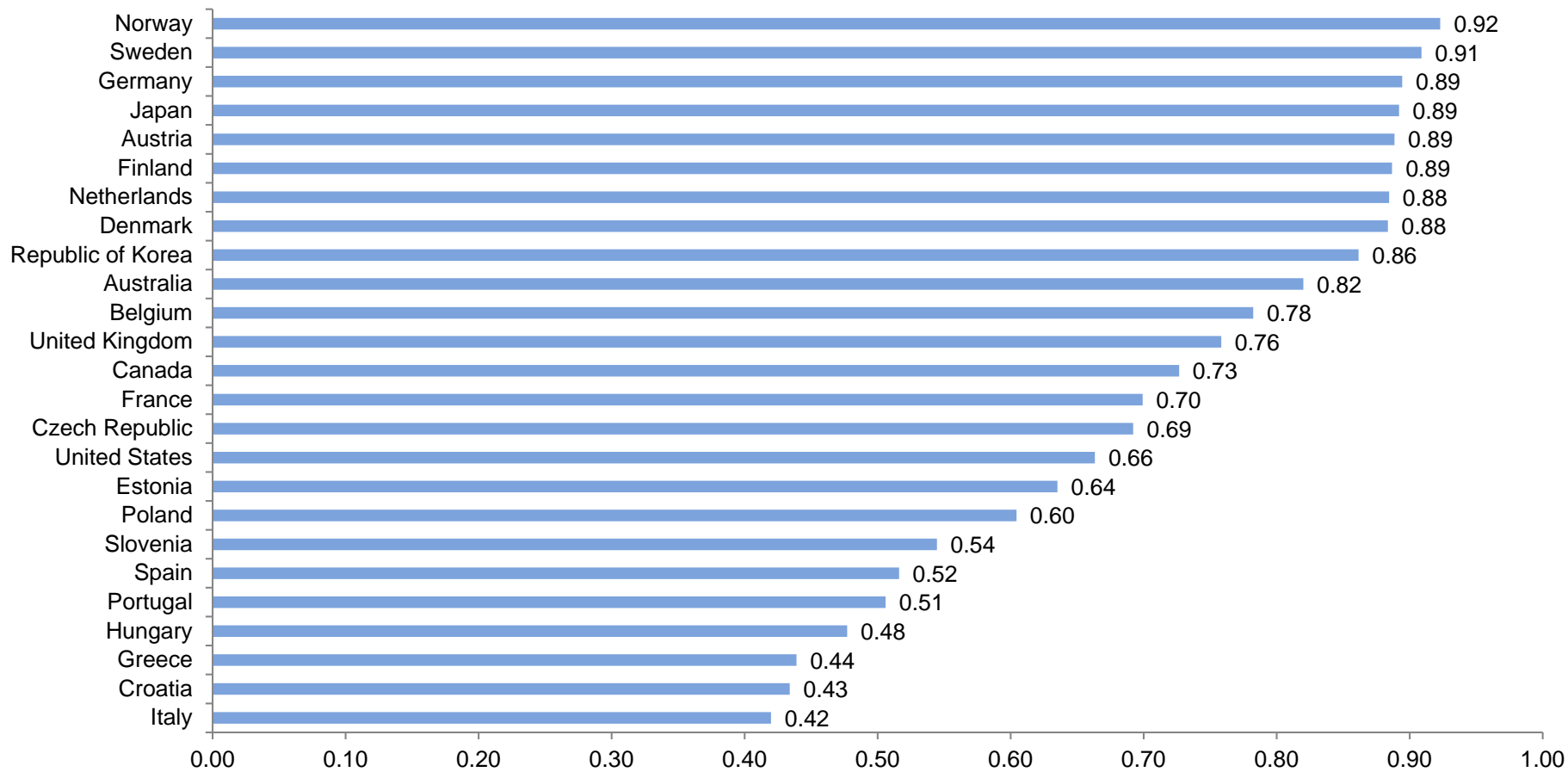
Sub-Factor 7.5: Civil Justice is not subject to unreasonable delays, Indexed High Income OSCE Countries



Sub-Factor 7.5: Civil justice is not subject to unreasonable delays, Indexed Middle Income OSCE Countries

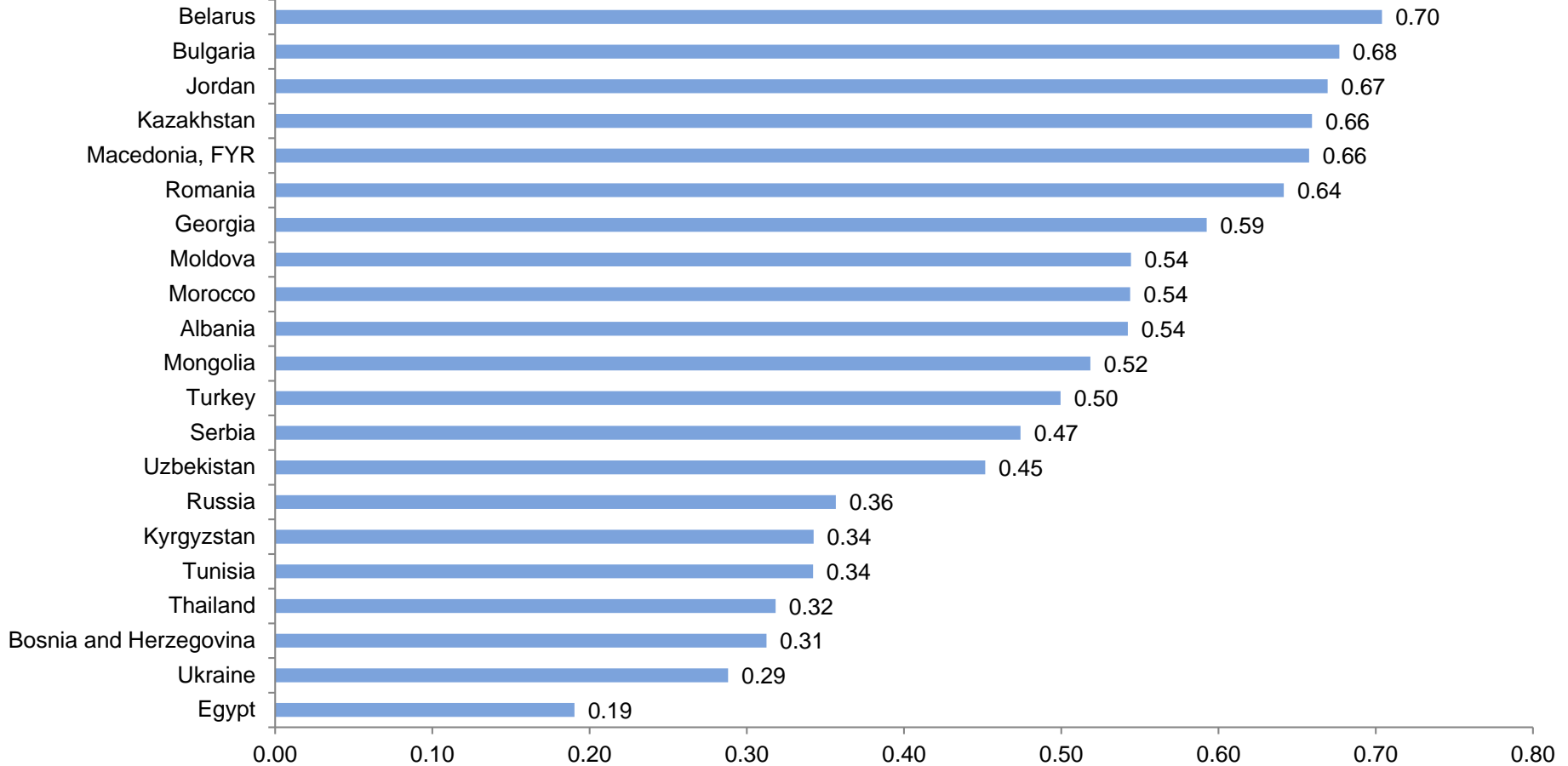


Sub-Factor 7.6: Civil justice is effectively enforced, Indexed High Income OSCE Countries

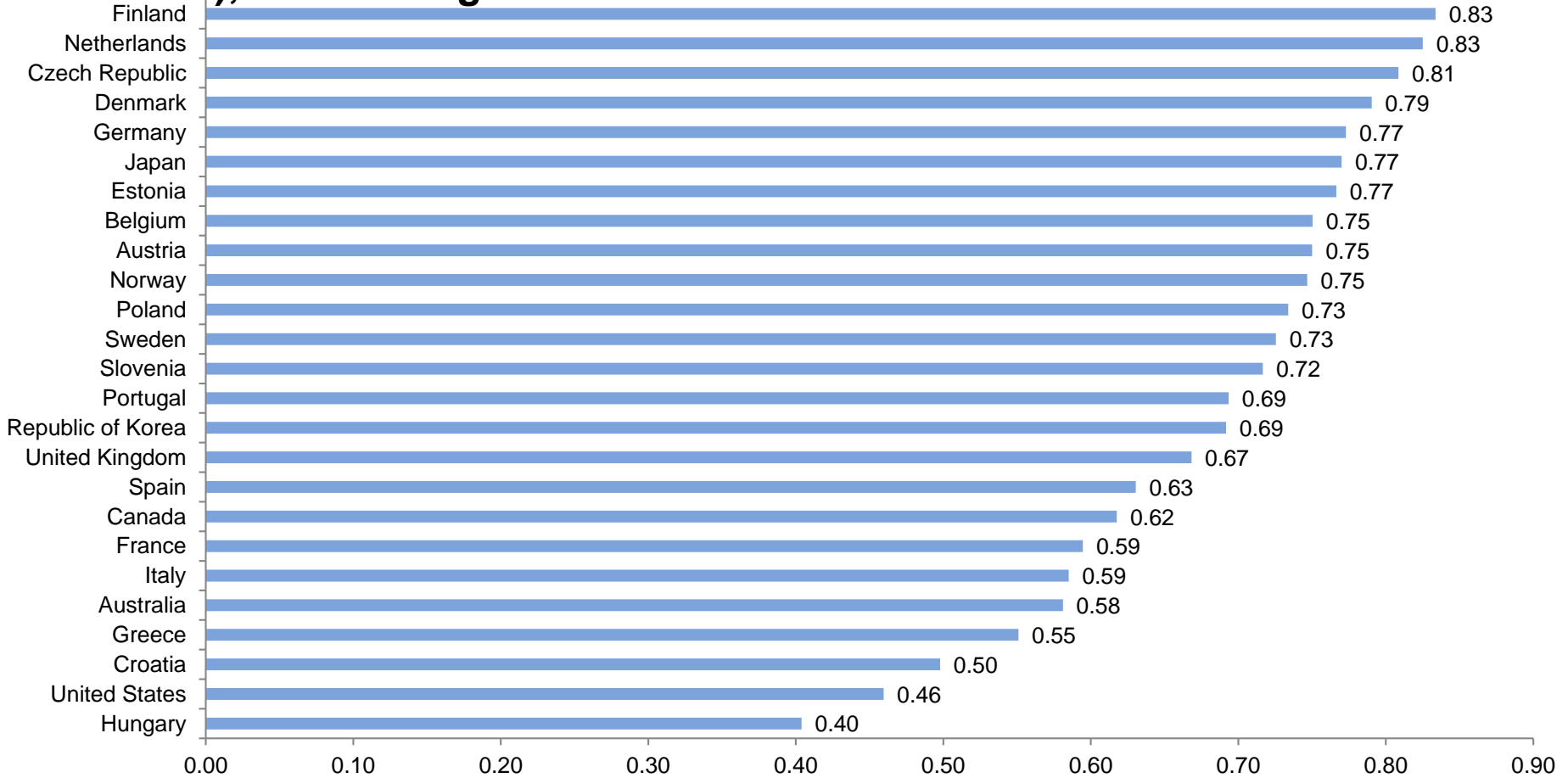


Sub-Factor 7.6: Civil justice is effectively enforced, Indexed

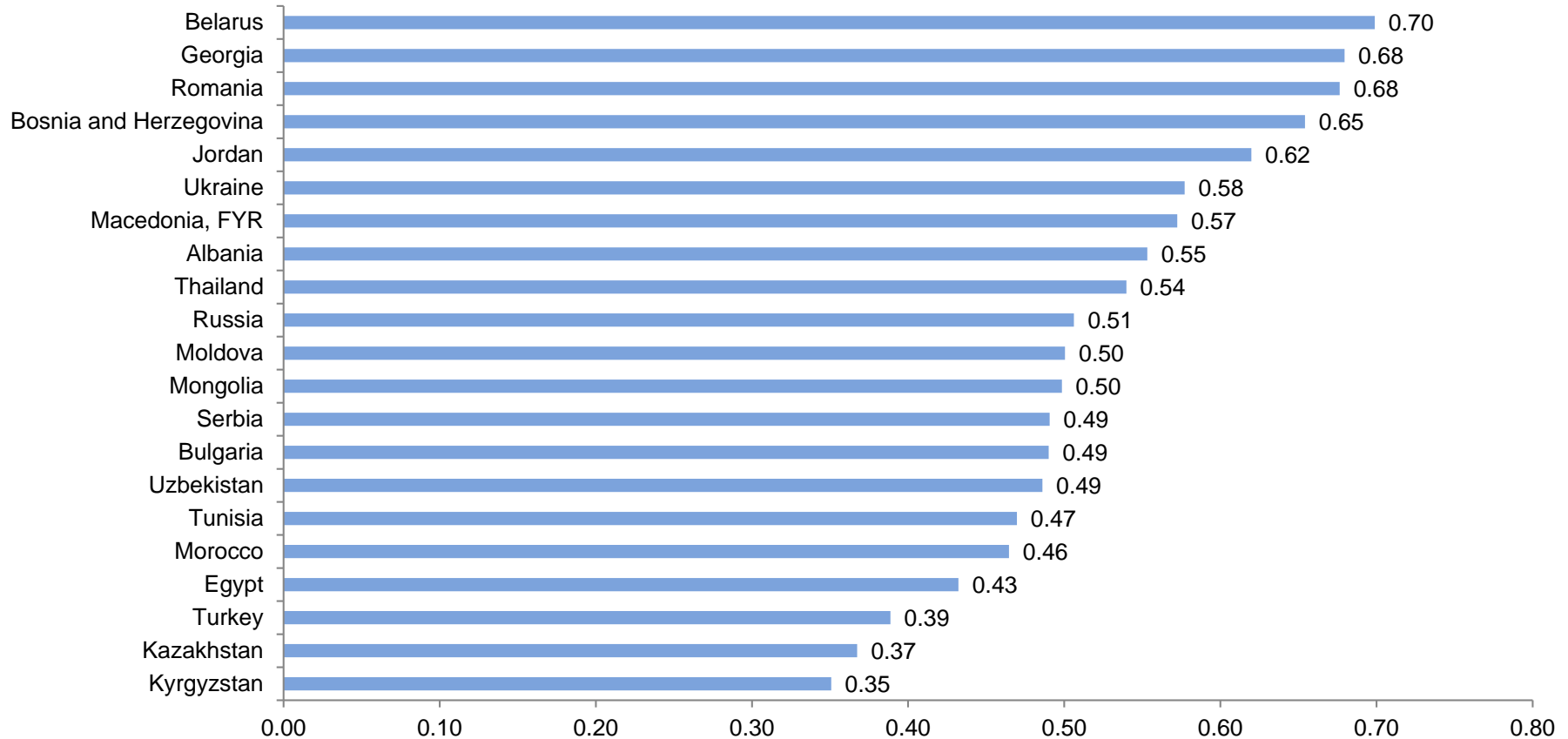
Middle Income OSCE Countries



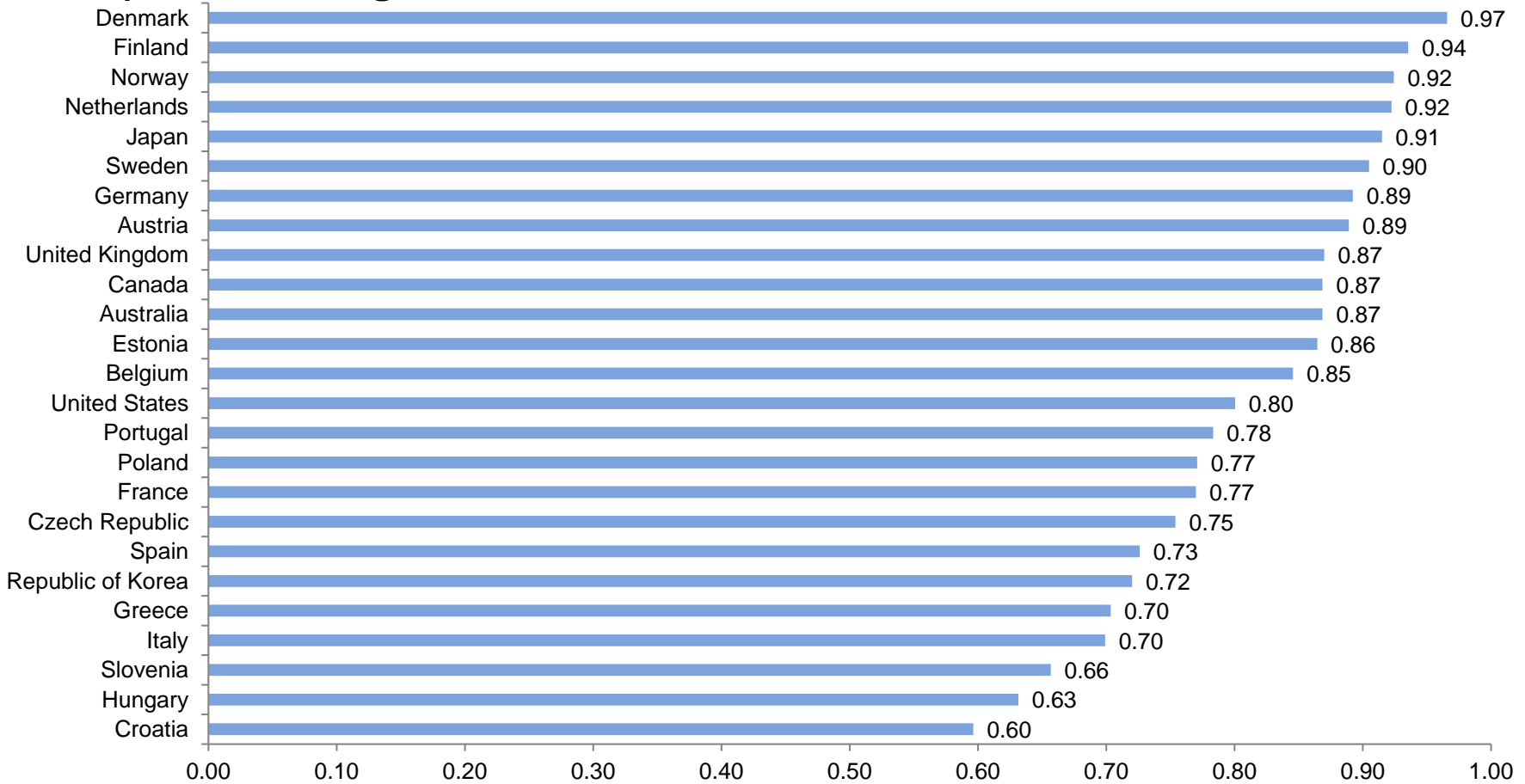
Civil and criminal justice are free of discrimination (Average of 7.2 & 8.4), Indexed High Income OSCE Countries



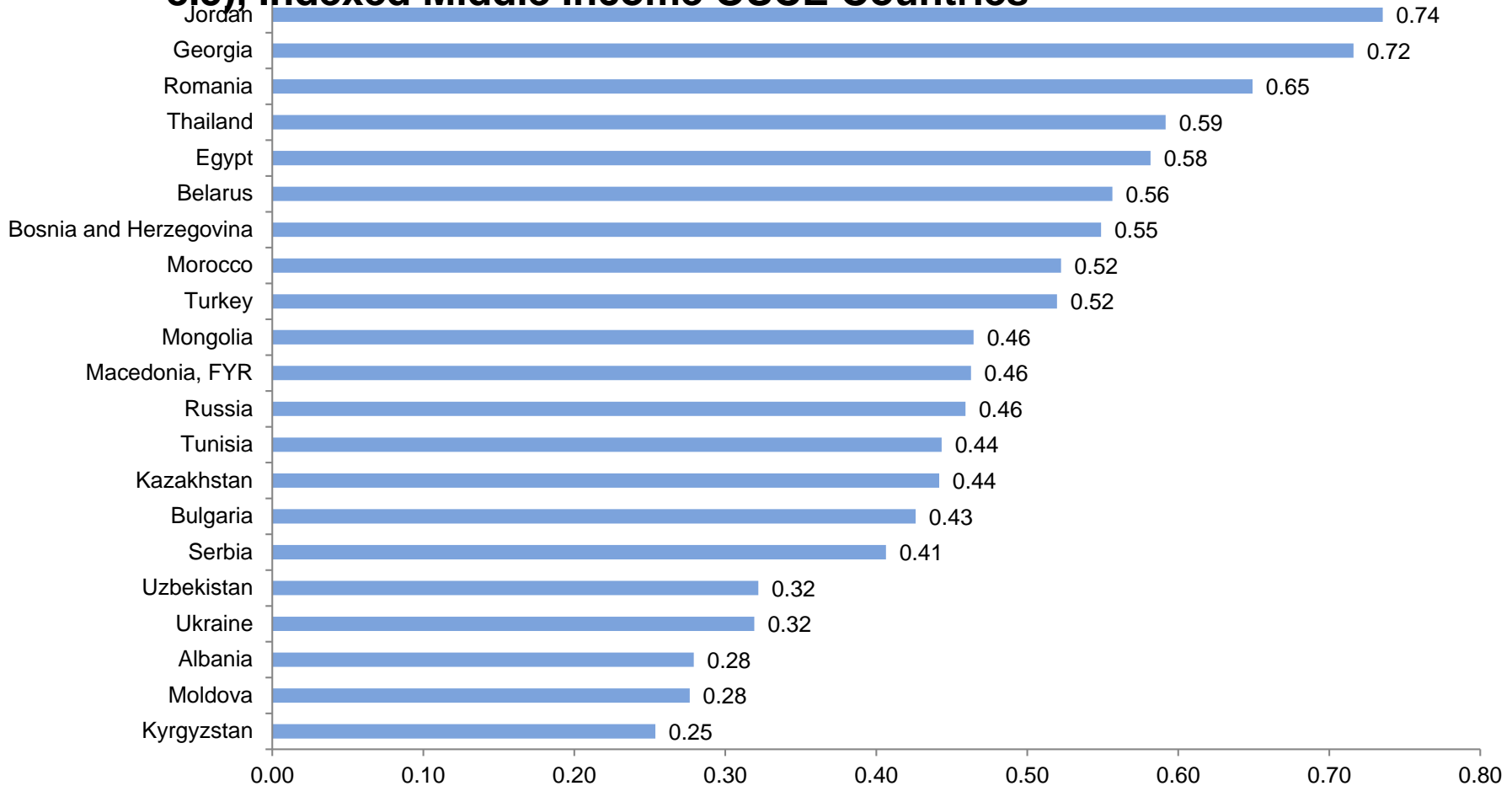
Civil and criminal justice are free of discrimination (Average of 7.2 & 8.4), Indexed Middle Income OSCE Countries




Civil and criminal justice are free of corruption (Average of 7.3 & 8.5), Indexed High Income OSCE Countries



Civil and criminal justice are free of corruption (Average of 7.3 & 8.5), Indexed Middle Income OSCE Countries



The background is a solid purple color. Overlaid on this is a faint, stylized map of the United States. A line graph is also overlaid, showing a fluctuating line that generally trends upwards from left to right. The text is white and positioned on the left side of the image.

Data can help align
incentives among diverse
constituencies around
specific reform priorities

Millions of middle-class Canadians unable to afford

THE GLOBE AND MAIL



Top judge sounds alarm over Canada's poor access-to-courts ranking

KIRK MAKIN

HALIFAX— Globe and Mail Update

An international finding that Canada ranks poorly when it comes to access to the courts should serve as a wake up call to the entire justice system, says Chief Justice Beverley McLachlin.

Speaking to the annual Canadian Bar Association conference today, Chief Justice McLachlin said that Canada placed ninth in a recent ranking of 12 European and North America countries.

Colombia: Argument for reform

EL ESPECTADOR

Gobierno le pide a la Corte más proactividad para reformar la justicia

Por: elespectador.com

El mandatario no se refirió a la no elección de Fiscal General por parte del alto tribunal.



Juan Manuel Santos

“(...) Another important organization that promotes justice around the world, the **World Justice Project**, just released its report entitled **Rule of Law Index**, and it includes Colombia... If we review the area of access to justice, we find that we get a score very close to zero on the effectiveness of the criminal investigation system... these reports, that are known on a global scale, must make us turn on our alarms. You—the judiciary—and us—the government—together with Congress, must put all our effort to achieving a more efficient and effective criminal justice system.”

Juan Manuel Santos
President of Colombia

The Economist

The New York Times

Helping Ordinary People

Updated November 16, 2010, 04:45 PM

Anthony Sebok is a professor of law at Benjamin N. Cardozo School of Law. He has written extensively on comparative litigation, mass torts and litigation funding.

Cutting legal costs

The paper chase

Lawyers abusing procedures on evidence slow ju

Jun 23rd 2011 | NEW YORK

AMERICA thinks of itself as a land of the rule of law. Its allegiance has it. The status of the rule of law is on a high echelon in many categories. The government powers are not used badly: it came 21st, it

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relevant. The right to
of information, but to
more.

The problem has worsened. It is more complicated and more subject to discovery. S
Clients may not always

Civil litigation is like health care in America. We sometimes spend extravagantly on vast numbers of legal problems

The Miami Herald

Survey: U.S. trails in equal legal treatment of citizens

Daniel Lippman | McClatchy Newspapers

ts' lawyers are
amed for the
st of litigation

While the U.S. scored high in many areas — including checks and balances in the legal system, civil liberties, freedom of expression and independence of the judiciary — it trailed western European countries in such areas as legal access for low-income communities and ethnic minorities...

covered eight areas including corruption, security, and access to the legal system. The researchers also interviewed 2,000 experts around the world to compile what they called a comprehensive picture of whether citizens believe their governments adhere to the rule of law.

A fair legal system provides a critical backbone and infrastructure for countries — ensuring that they run effectively, citizens get a fair shake and companies can operate under predictable rules, the researchers said.

on plaintiffs
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due in part to a
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ine, clients and

Access To Justice In U.S. At Third-World

T SAYS U.S. LAGS IN PRO TICE

The New York Times

Helping Ordinary People

Updated November 16, 2010, 04:45 PM

Anthony Sebok is a professor of law at Benjamin N. Cardozo School of Law. He has written extensively on comparative litigation, mass torts and litigation funding.

Civil litigation is like health care in America. We sometimes spend extravagantly for certain highly visible legal disputes, while in the background vast numbers of Americans

On the other hand, as the New York Times noted in [a recent editorial](#), the chief judge of New York's highest court is very concerned that poor and middle class New Yorkers lack access to the courts for simple disputes ranging from credit card fraud to custody disputes. Recently the [World Justice Project's "Rule of Law Index"](#) ranked the U.S. below Mexico and Croatia in "access to and affordability of legal counsel in civil disputes."

outside counsel over \$125 million. Other defense costs added an additional \$40 million.

On the other hand, as the New York Times noted in [a recent editorial](#), the chief judge of New York's highest court is very concerned that poor and middle class New Yorkers lack access to the courts for simple disputes ranging from credit card fraud to custody disputes. Recently the [World Justice Project's "Rule of Law Index"](#) ranked the U.S. below Mexico

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1,017 20



Criminal Justice in México:



Criminal Justice In México



EL UNIVERSAL

AL tiene instituc estudio

Expertos analizan el estado de derecho
Martes 14 de junio de 2011
J. Jaime Hernández/Corresponsal| El Univers

[Comenta la Neta](#)

WASHINGTON.— América Latina avances en materia de apertura y políticas, pero sus instituciones siguen siendo "frágiles", con signos de problemas de corrupción y en materia de responsabilidad gubernamental, según un informe publicado por el World Economic Forum.

VANCO

NACIONAL INTERNACIONAL DEPOR

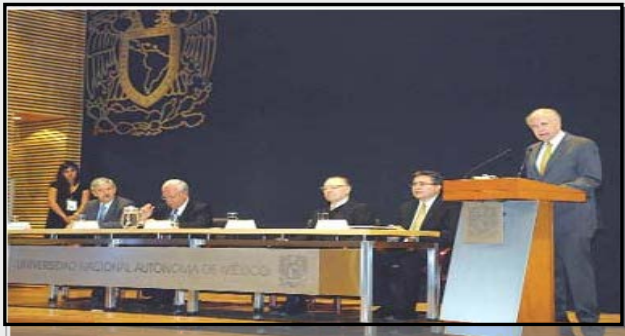
México lento en ju

Para el WJP el imperio de la ley es la piedra angular para erradicar la

LA CRÓNICA DE HOY

Narro urge a construir un verdadero estado de derecho; "no puede haber democracia verdadera donde no hay seguridad"

ADRIÁN FIGUEROA | NACIONAL 2011-06-07 | Hora de creación: 00:38:20 | Última modificación: 01:42:41



DISCURSO. EL RECTOR JOSÉ NARRO ROBLES DIJO QUE NI EL NI LA COMUNIDAD UNIVERSITARIA RENUNCIARÁN A DAR SU PUNTO DE VISTA. FOTO: NOTIMEX

seguridad y las instancias de impartición de justicia no tengan suficiente integridad y credibilidad".

En su discurso en la Antigua Escuela de Medicina, señaló que la democracia moderna requiere de la confianza

publicó este 13 de junio en Washington, será presentado en el III Fórum del WJP que se

A México le urge construir un verdadero estado de derecho, porque el país parece estar funcionando más a partir de intercambios personales, con ventajas recíprocas, que de la vigencia de las leyes, aseguró el rector de la UNAM, José Narro Robles.

Y también "es hora de aceptar que la corrupción, la desigualdad, la inseguridad y la debilidad de nuestro estado de derecho son impedimentos para el progreso y el desarrollo económico", añadió.

Al inaugurar la "Conferencia Internacional sobre Seguridad y Justicia en Democracia. Hacia una política de Estado en los albores del tercer milenio", Narro Robles destacó que "no puede haber democracia verdadera donde no hay

Justicia criminal

o 2011, un informe anual publicado por el World Economic Forum, la impartición de justicia, problemas de corrupción y en materia de responsabilidad gubernamental, según un informe publicado por el World Economic Forum.

tras entidades: la ciudad de México, Guadalajara

se en el ámbito de la justicia, desde un sistema

ANANA

os en nivel más b

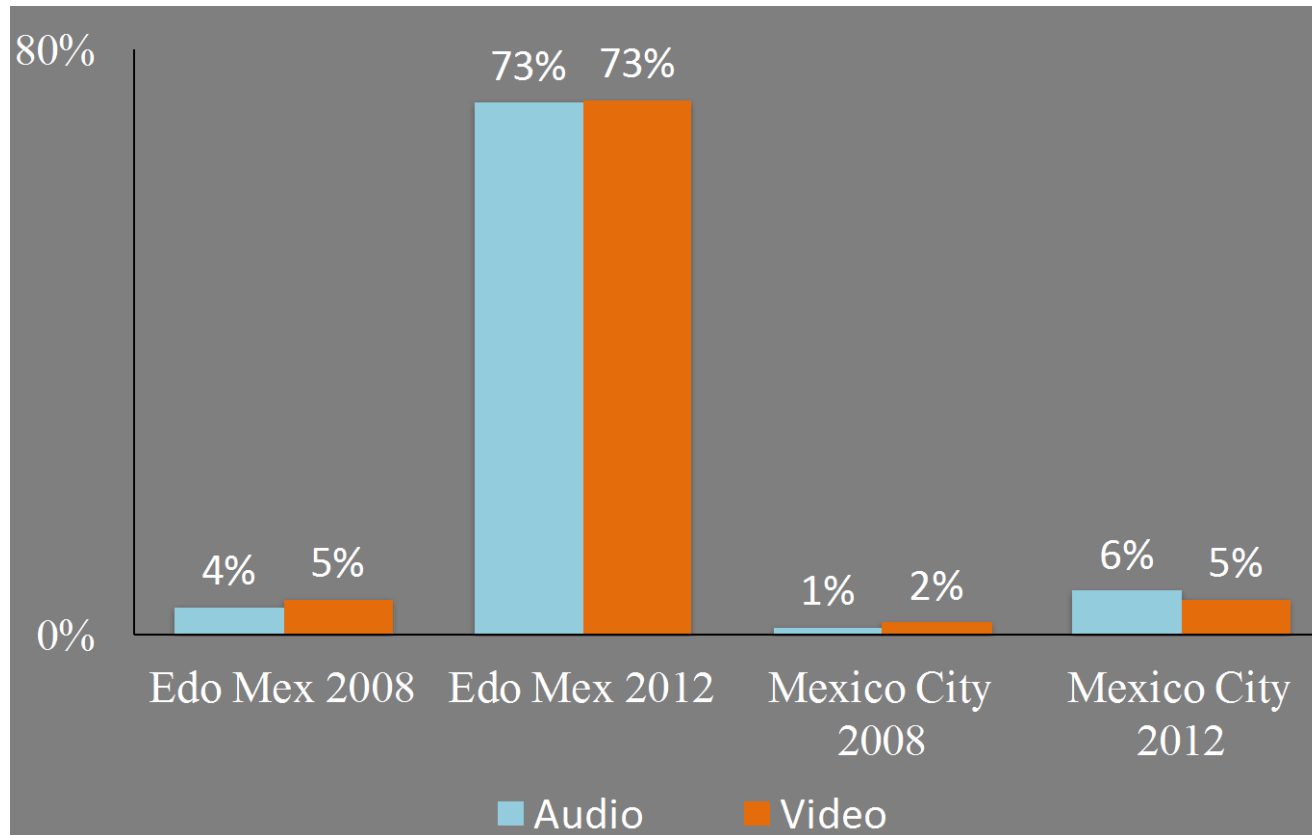
10
ndice calificó los gobiernos según el índice de integridad del sistema judicial

y Holanda están en la cumbre de la lista de los países más ricos, una lista publicada ayer que coloca a Estados Unidos

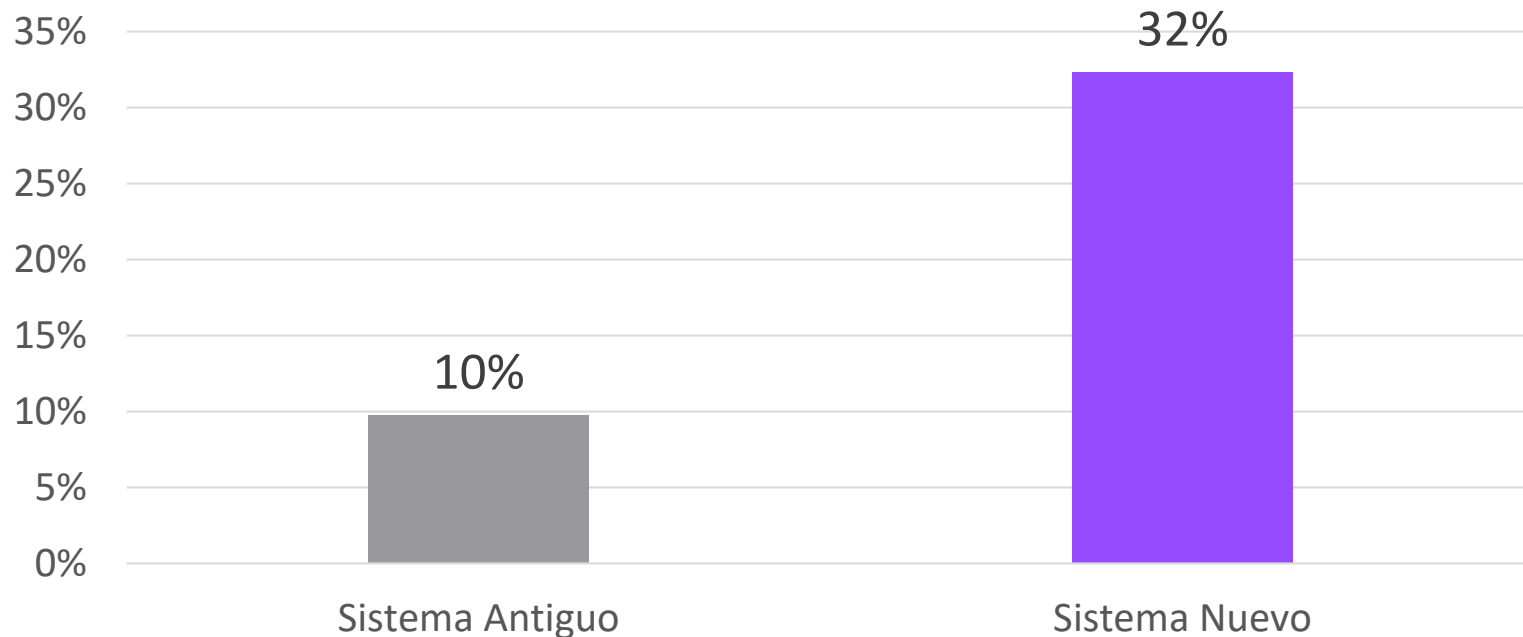
COUNTRY/ JURISDICTION	SCORE	GLOBAL RANKING	COUNTRY/ JURISDICTION	SCORE	GLOBAL RANKING	COUNTRY/ JURISDICTION	SCORE	GLOBAL RANKING
Finland	0.85	1	Dominica	0.56	40	Moldova	0.38	79
Norway	0.83	2	Malaysia	0.56	41	Indonesia	0.38	80
Austria	0.83	3	Costa Rica	0.55	42	Pakistan	0.38	81
Singapore	0.83	4	Hungary	0.54	43	Morocco	0.37	82
Denmark	0.82	5	Suriname	0.54	44	Cote d'Ivoire	0.37	83
Hong Kong SAR, China	0.80	6	Croatia	0.54	45	Philippines	0.36	84
Netherlands	0.80	7	South Africa	0.52	46	Zimbabwe	0.36	85
Sweden	0.79	8	Botswana	0.52	47	Ecuador	0.36	86
Germany	0.77	9	Macedonia, FYR	0.51	48	Sierra Leone	0.36	87
United Kingdom	0.76	10	Belarus	0.51	49	Kenya	0.35	88
Belgium	0.76	11	Greece	0.51	50	Guyana	0.35	89
Australia	0.75	12	Vietnam	0.50	51	Peru	0.34	90
New Zealand	0.75	13	Sri Lanka	0.49	52	Colombia	0.34	91
United Arab Emirates	0.74	14	Mongolia	0.48	53	Serbia	0.34	92
Canada	0.74	15	Ghana	0.47	54	Uganda	0.34	93
Czech Republic	0.73	16	China	0.47	55	Dominican Republic	0.34	94
Republic of Korea	0.71	17	Tunisia	0.46	56	El Salvador	0.34	95
Antigua and Barbuda	0.70	18	Albania	0.46	57	Kyrgyzstan	0.33	96
Estonia	0.70	19	Jamaica	0.45	58	Bangladesh	0.33	97
Poland	0.69	20	Thailand	0.45	59	Russia	0.33	98
Japan	0.68	21	Nepal	0.44	60	Ethiopia	0.33	99
United States	0.68	22	Malawi	0.44	61	Belize	0.32	100
Bahamas	0.68	23	Uzbekistan	0.44	62	Myanmar	0.32	101
Portugal	0.67	24	Egypt	0.43	63	Nicaragua	0.32	102
Slovenia	0.66	25	Burkina Faso	0.43	64	Lebanon	0.31	103
Grenada	0.65	26	Iran	0.43	65	Cambodia	0.30	104
France	0.65	27	Senegal	0.43	66	Cameroon	0.30	105
St. Lucia	0.64	28	Argentina	0.43	67	Guatemala	0.29	106
Italy	0.64	29	Nigeria	0.42	68	Panama	0.29	107
Spain	0.63	30	Zambia	0.42	69	Mexico	0.29	108
St. Vincent & the Grenadines	0.62	31	Bulgaria	0.41	70	Afghanistan	0.28	109
Barbados	0.61	32	India	0.41	71	Liberia	0.26	110
Jordan	0.59	33	Tanzania	0.41	72	Honduras	0.25	111
Uruguay	0.58	34	Kazakhstan	0.41	73	Bolivia	0.24	112
Romania	0.58	35	Trinidad and Tobago	0.40	74	Venezuela	0.13	113
St. Kitts and Nevis	0.58	36	Turkey	0.40	75			
Chile	0.58	37	Madagascar	0.40	76			
Georgia	0.56	38	Ukraine	0.40	77			
Bosnia and Herzegovina	0.56	39	Brazil	0.39	78			



¿Qué porciones del juicio fueron grabadas con audio y video?
% que dice todo o casi todo.

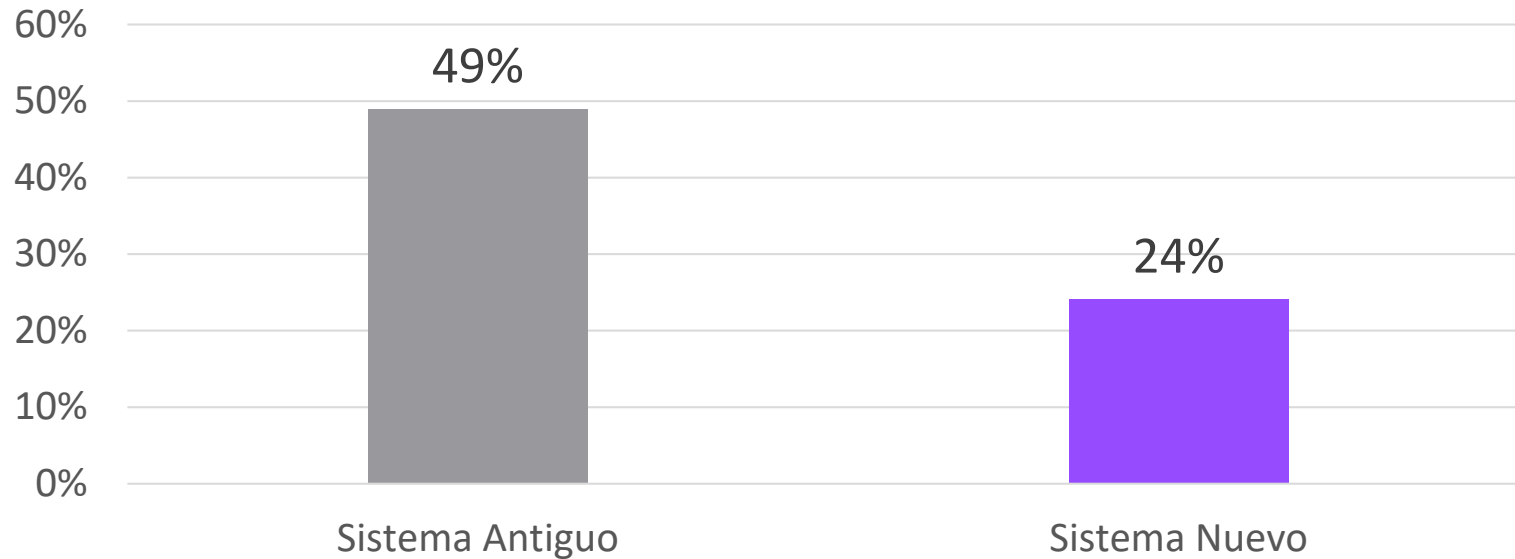


Porcentaje de personas encarceladas que considera que la sentencia fue justa (Tabasco)



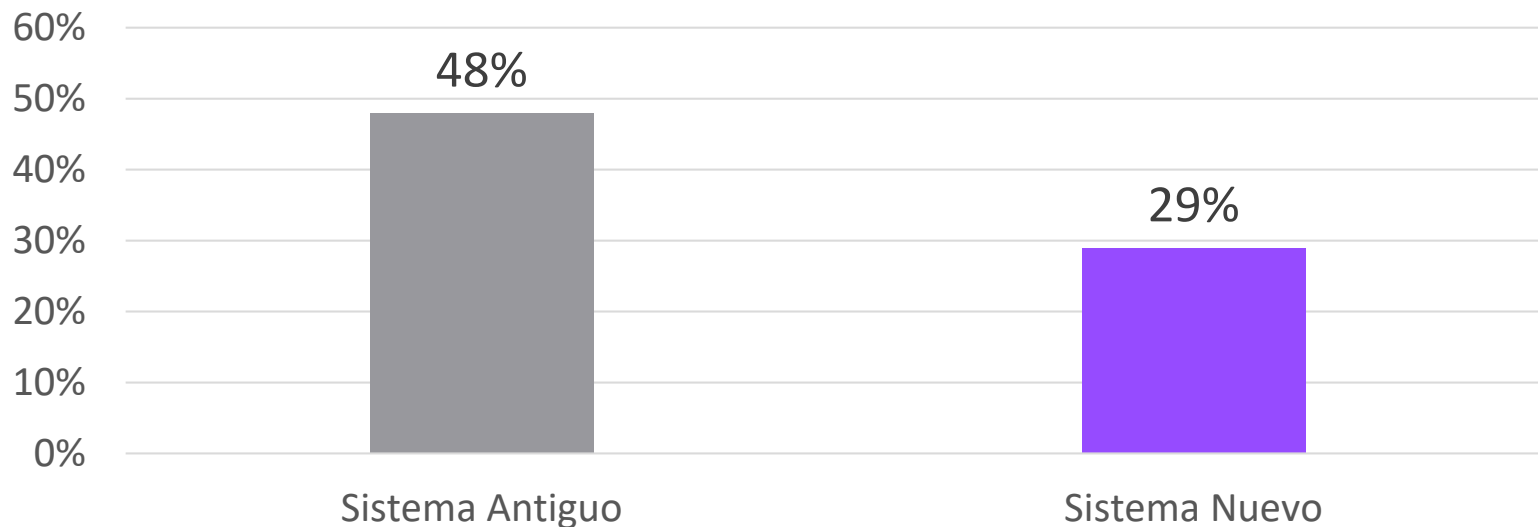
Fuente: Encuesta a población privada de la libertad en **Tabasco**, 2016, Abogados con Cámara, WJP.

Porcentaje de personas encarceladas que cree que con un soborno al Juez hubiera evitado la prisión (Tabasco)



Fuente: Encuesta a población privada de la libertad en **Tabasco**, 2016, Abogados con Cámara, WJP.

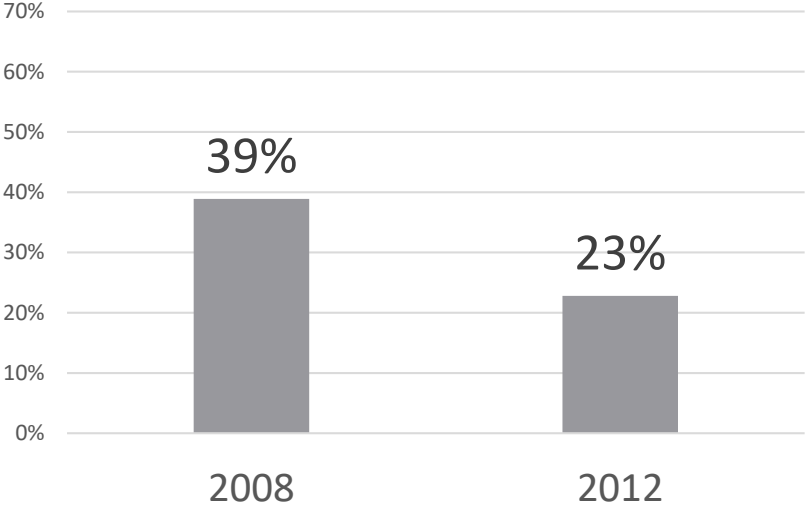
Porcentaje de personas encarceladas que afirma que la autoridad plantó evidencia en su contra (Tabasco)



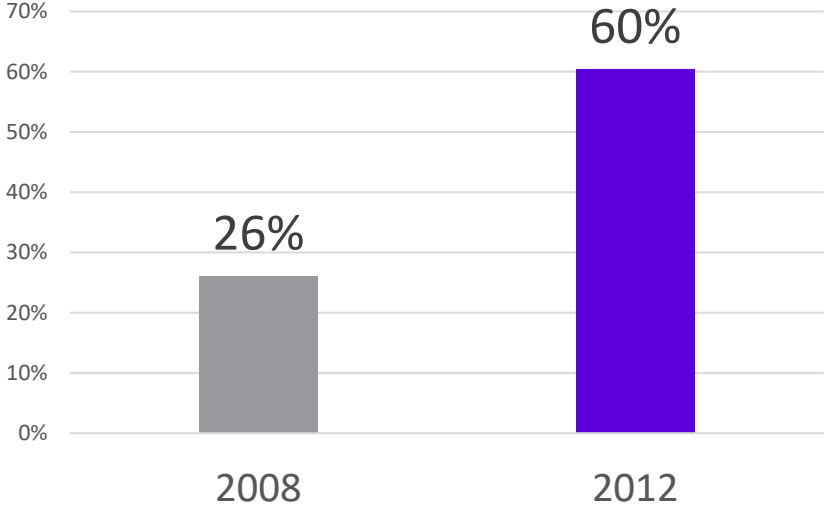
Fuente: Encuesta a población privada de la libertad en **Tabasco**, 2016, Abogados con Cámara, WJP.

Porcentaje de personas encarceladas que afirma que los Jueces fueron claros

CdMx

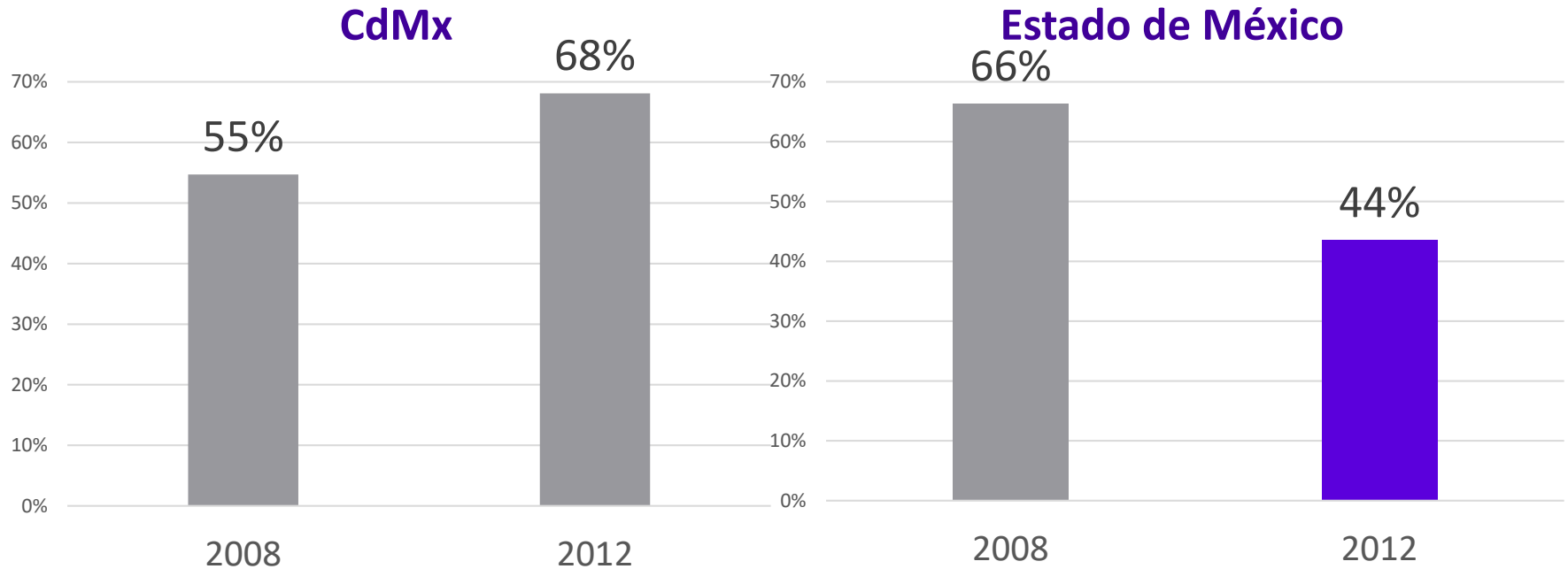


Estado de México



Fuente: Encuesta a población privada de la libertad en **Ciudad de México** y **Estado de México**, Abogados con Cámara, WJP.

Porcentaje de personas encarceladas que se considera inocente



Fuente: Encuesta a población privada de la libertad en **Ciudad de México** y **Estado de México**, Abogados con Cámara, WJP.

Difficulties for judicial reform:

- Multiple and partially contradicting “social goals”
- Multiple actors and constituencies = Not ONE owner = Requires collective action
- Diverging interests and incentives among multiple actors

How to ensure the independence and quality of the judiciary?

1. Expressly recognize competing social interests and seek balance among them
2. Approach Justice as a Public Service (take users' perspective; consider both the supply and demand aspects of the equation)
3. Use reliable data to align incentives among multiple constituencies
4. Take into account cultural differences and avoid pro-forma, one-size-fits-all solutions



**World Justice
Project**

[WorldJusticeProject.org](https://www.worldjusticeproject.org)