

Connecting the Dots: The Rule of Law and Business

Developing a Global Business Rule of Law Dashboard



COALITION FOR THE
RULE OF LAW
IN GLOBAL MARKETS

Published by

*the Americas Department of the U.S. Chamber of Commerce
on behalf of the Coalition for the Rule of Law in Global Markets
underlying study prepared by the Pugatch Consilium*

Acknowledgements

The Coalition for the Rule of Law in Global Markets at the U.S. Chamber of Commerce is indebted to Dr. Meir Pugatch, David Torstensson and the Pugatch Consilium (www.pugatch.com) for sharing our vision of the opportunity to rationalize the nexus between global business and rule of law. Their pioneering work to empiricize an inherently intangible subject through meta-analysis will empower business to engage productively with governments worldwide toward more transparent and effective global governance in the economic space.

We are also enduringly grateful to Bill Neukom, Juan Botero, and their colleagues at the World Justice Project, whose unparalleled dedication to the rule of law has been the inspiration and enabler of much of the Coalition's work. Likewise, the OECD, the World Bank, the Heritage Foundation, Transparency International, Global Integrity, and others too numerous to name have enabled us through their work and their partnership to build a platform of thought leadership in this critical area for business.

Finally, no business coalition can succeed without strong corporate leadership, and we wish to especially acknowledge the Chevron Corporation, the Boeing Company, and coalition chair Enel North America for giving so generously of their time, resources, and expertise.

Contents

Executive Summary
List of Abbreviations

1. Introduction

- 1.1 Project background
- 1.2 Purpose

2. Methodology

- 2.1 Defining the rule of law and business
- 2.2 The Global Business Rule of Law Dashboard – Methodological overview
- 2.3 Deconstruction
- 2.4 Country sample

3. Mapping Current Rule of Law Measures

- 3.1 An overview of international indices and surveys of the rule of law
- 3.2 Headline results
- 3.3 World Economic Forum: *The Global Competitiveness Report 2012-13*
- 3.4 The World Justice Project: *Rule of Law Index 2012-13*
- 3.5 Transparency International: *Global Corruption Barometer*
- 3.6 Heritage Foundation: *Index of Economic Freedom 2013*
- 3.7 Global Integrity: *Global Integrity Index 2011*
- 3.8 World Bank: *Worldwide Governance Indicators*
- 3.9 The World Bank and the International Finance Corporation: *Doing Business 2013*

4. The Global Business Rule of Law Dashboard

- 4.1 Overall results
- 4.2 World Economic Forum: *The Global Competitiveness Report 2012-13*
- 4.3 The World Justice Project: *Rule of Law Index 2012-13*
- 4.4 Heritage Foundation: *Index of Economic Freedom 2013*
- 4.5 Global Integrity: *Global Integrity Index 2011*
- 4.6 World Bank: *Worldwide Governance Indicators*
- 4.7 The World Bank and the International Finance Corporation: *Doing Business 2013*

5. Conclusions and Next Steps for Further Research

- 5.1 Mapping the rule of law and business: Gaps in the current research
- 5.2 The Global Business Rule of Law Dashboard and public policy: Recommendations for the Americas

Appendix I

Appendix II

Tables and Figures

Executive Summary

The U.S. Chamber of Commerce has formed a Coalition for the Rule of Law in Global Markets to further the rule of law and the understanding of the importance of the rule of law to economic and social development. An important part of the Coalition's and U.S. Chamber's work is to seek to identify and understand the manner in which the rule of law is being measured globally.

Currently there are a number of indices and surveys available that attempt to measure and quantify the rule of law on a country by country basis. These measures range from specific indices and surveys of the presence or absence of the rule of law to broader measures of economic freedom or development and competitiveness in which the rule of law is part of the measure. Examples of such measures include the World Economic Forum's *Global Competitiveness Report*; The World Justice Project's *Rule of Law Index*; the Heritage Foundation's *Index of Economic Freedom*; Transparency International's *Global Corruption Barometer*; and a host of others.

Pugatch Consilium has been commissioned by the U.S. Chamber to provide an evidence-based analysis of existing indices and surveys of the rule of law. That analysis is described in this report. Specifically, this report seeks to:

- map, understand and analyze the extent to which existing international indices and surveys of legal and regulatory environments include indicators and measure areas of rule of law as they relate to business; and
- extract and amalgamate those relevant indicators into a composite meta-measure (the GBRLD) of the rule of law as it relates to business comparing a regional sample of countries.

The findings of the report can be distilled into two key areas:

- **Greater need for the business community to understand the coverage and meaning of existing rule of law indices and surveys, and their operational implications** – One of the key findings of this report is that each measure

mapped seeks to assess different things: rule of law, economic competitiveness, rate of corruption, governance etc. Overall some indices and surveys have a greater degree of focus and specificity towards rule of law and business issues than others. See, for example, the *Global Competitiveness Report*, *Rule of Law Index* and GII. It is of real importance for the business community to gain greater insight and a detailed picture of exactly how the mapped indices and surveys work, what they measure and the manner in which the indicators measured can be used in a concrete, practical and operational manner by businesses on the ground.

- **Gaps relating to the practical on-the-ground rule of law needs of business**
 - Given that they are often only a small part of the overall findings of existing measures, business related rule of law indicators are often overlooked or submerged into the overall findings of a given index or survey. Although, it should be noted that this lack of specificity or focus on business related indicators is **not** a weakness or criticism of existing measures; it is not the purpose of these individual measures to focus exclusively on rule of law and business indicators.

Based on these findings it is clear that the GBRLD fills a void and is a first step in a process of consistently mapping, identifying and emphasizing business related rule of law indicators. Extracting and combining key indicators on rule of law business issues to form the GBRLD both reveals and emphasizes data and results that are often lost in the wider work of the mapped measures. Relying on existing robust data, combining extracted rule of law and business specific indicators together into the GBRLD provides a unique and focused analytical tool for understanding the rule of law environment as it relates to business on a country by country basis.

Although the GBRLD does fill a role and void in the existing research there are limitations. To complement existing work the inclusion of new and more detailed rule of law business indicators in existing measures would strengthen the overall body of research and understanding of the rule of law as it relates to business.

Looking at the indices and surveys mapped in this report it is clear that not all areas identified as critical by the U.S. Chamber to the rule of law and business are currently being measured. For example, although areas relating to corruption in public procurement and the existence and enforcement of property laws are measured relatively extensively in five of the seven mapped indices and surveys, coverage of other areas, such as, regulatory and policy trade barriers; adherence to trade, investment, and tax treaties or agreements; and the adherence to litigation and international arbitration rulings regarding sanctity of contracts and agreements; is less extensive.

Based on these findings two improvements can be made that together would strengthen the current body of research:

- the addition of new rule of law and business indicators in the areas identified to existing indices and surveys; and
- expanding the number of indices and surveys that include and measure both existing rule of law and business indicators as well as developing new such indicators.

The Global Business Rule of Law Dashboard: Main findings and recommendations for the Americas

With regards to the application of the GBRLD to the Americas the main finding is that there is great variety in the depth and coverage of the rule of law environment as it relates to business in the countries sampled. The results show how the rule of law as it relates to business is the strongest in North America and Chile; displaying some challenges in Colombia, Brazil and Mexico; and significant weaknesses in Argentina, Nicaragua, Ecuador and Venezuela. Generally, the trio of Canada, the U.S. and Chile was found to have a relatively more robust environment than some countries such as Venezuela, Ecuador, Argentina and Nicaragua, which faced a number of key challenges in areas including the protection of property rights, resolving insolvency, corruption and undue influence. Other countries, such as Mexico and Colombia, faced challenges in areas relating to security. As one would expect, broadly speaking, the

results correlate and follow the results of the measures examined and upon which the GBRLD is built. Still, there are significant discrepancies and differences in country results from measure to measure and indicator to indicator.

The report takes these differences into account providing recommendations and principles that could be followed in strengthening the rule of law environment as it relates to business in the region. Given the existence of a broad and robust body of policy analysis and recommendations on the rule of law more generally (including on the importance of eradicating corruption, the use of due process and implementing a fair and transparent rules based system of governance) the recommendations focus primarily on specific operational business related rule of law challenges.

- **Greater emphasis and appreciation of the operational aspects of rule of law issues relating to business**
- **More coordination and training**
- **Increased dialogue and consensus building with business and other relevant stakeholders built around empirical and evidence-based research**

1. Introduction

1.1 Project background

The rule of law has been central to international policymaking and analysis for a number of years. The UN General Assembly has considered the rule of law an agenda item since the early 1990s and in 2012 held the first ever high level meeting on the topic.¹ In academia and among policymakers the rule of law has received increasing amounts of attention and interest, not only from lawyers or legal scholars but from all academic disciplines, including political scientists, policy analysts, economists and social scientists. Similarly, to international aid agencies and groups the rule of law has become an essential component in economic and social development policy.² Although not always studied or widely appreciated the rule of law is also of fundamental importance to the interests of the business community.

The U.S. Chamber of Commerce has formed a Coalition for the Rule of Law in Global Markets to further the rule of law and the understanding of the importance of the rule of law to economic and social development. An important part of the Coalition's and U.S. Chamber's work is to seek to identify and understand the manner in which the rule of law is being measured globally.

Currently there are a number of indices and surveys available that attempt to measure and quantify the rule of law on a country by country basis. These measures range from specific indices and surveys of the presence or absence of the rule of law, to broader measures of economic freedom or development and competitiveness in which the rule of law is part of the measure. Examples of such measures include the World Economic Forum's *Global Competitiveness Report*; The World Justice Project's *Rule of Law Index*; the Heritage Foundation's *Index of Economic Freedom*; Transparency International's *Global Corruption Barometer*; and a host of others.

1.2 Purpose

Pugatch Consilium has been commissioned by the U.S. Chamber to provide an evidence-based analysis of existing indices and surveys of the rule of law. Our analysis is described in this report. Specifically, this report seeks to:

- map, understand and analyze the extent to which existing international indices and surveys of legal and regulatory environments include indicators and measure areas of rule of law as they relate to business; and
- extract and amalgamate those relevant indicators into a composite meta-measure (the GBRLD) of the rule of law as it relates to business comparing a regional sample of countries.

This analysis consists of four main components.

First, the report maps and deconstructs existing international indices and surveys of the rule of law, identifying those indicators, questions or sections of each individual index and survey that relate to the rule of law and business. The purpose of this mapping exercise is both to establish the current coverage of rule of law issues as they relate to business as well as to identify those indicators and survey questions which can be extracted and included in the GBRLD.

Second, the report extracts those indicators identified as having the highest relevance to the rule of law and business. The extraction process (explained in detail in Section 2) includes maintaining the statistical integrity and internal weighting system of the parent index or survey.

Third, the report combines the extracted indicators and questions from existing international indices and surveys of the rule of law into the overall meta-measure (the GBRLD) and then applies this measure to a regional sample of countries.

Finally, based on the mapping of existing indices and surveys the report also offers thoughts and conclusions on gaps in the current research on rule of law indicators as they relate to business.

2. Methodology

2.1 Defining the rule of law and business

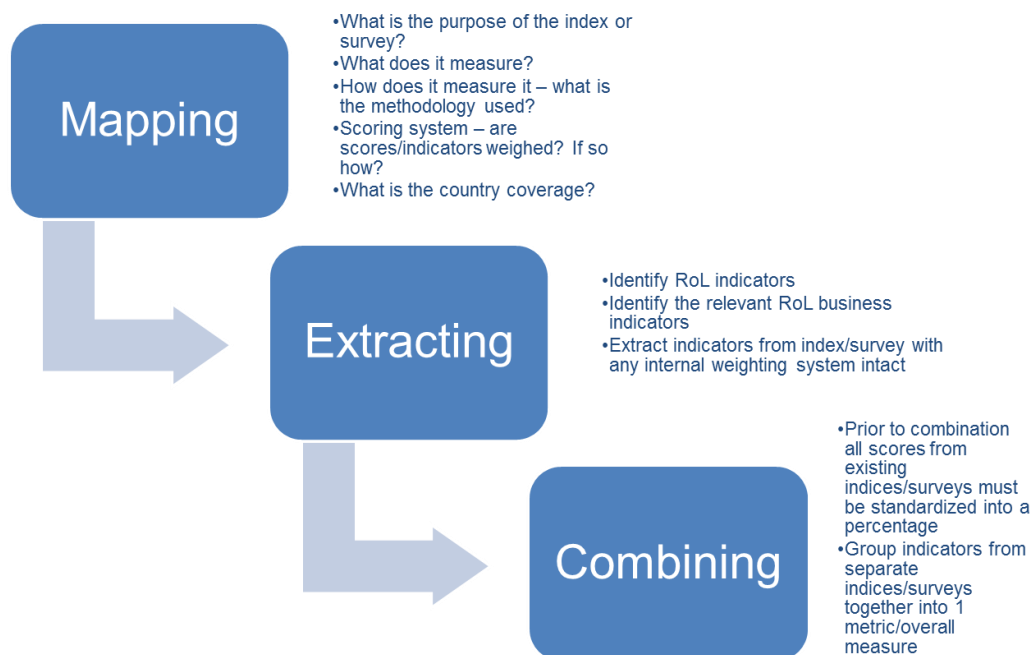
Definitions of the rule of law can vary significantly from source to source and discipline to discipline. At the risk of over-simplifying a complex concept, for the purpose of gaining an easy to comprehend and immediate overview one can speak of ‘thick’ or ‘thin’ definitions.³ Thick definitions view the rule of law as being conceptually bound up and linked to all aspects of how society is governed and the formal and informal freedoms granted or not granted. Thin definitions tend to focus more on procedural elements or outcomes, that is, are the relevant institutions and basic rights in place to provide adequate rights and the administration of justice?

For the purposes of this report the definition of the rule of law and business will be that used by the U.S. Chamber of Commerce and the Coalition for the Rule of Law in Global Markets. This definition was outlined in some detail by the U.S. Chamber in the 2013 Heritage Foundation’s *Index of Economic Freedom*. Below Table 1 cites the definition and five most important factors identified and used by the U.S. Chamber.

Table 1: Defining the rule of law and business: Five factors⁴

1. **Transparency.** Laws and regulations applied to business must be readily accessible and easily understood.
2. **Predictability.** Laws and regulations must be applied in a logical and consistent manner regardless of time, place, or parties concerned.
3. **Stability.** The state’s rationale for the regulation of business—for example, promotion of negotiation and implementation of trade agreements and other vehicles that strengthen rule of law, sanctity of contracts, and compliance with international law—must be consistent and coherent over time, establishing an institutional consistency across administrations, and free from arbitrary or retrospective amendment.
4. **Accountability.** Investors must be confident that the laws will be upheld and applied equally to government as well as the private sector and civil society: for example, anti-bribery and corruption issues.
5. **Due Process.** When disputes inevitably arise, they must be resolved not by ad hoc arrangements or special interventions, but in a fair, transparent, and predetermined process.

Figure 1: Building the GBRLD: Mapping, extracting and combining Indicators – a 3 step process



2.4 Country sample

The GBRLD covers a regional sample of 10 countries from the Americas. The countries sampled are: Argentina, Brazil, Canada, Chile, Colombia, Ecuador, Mexico, Nicaragua, U.S. and Venezuela. These countries provide a good mix of middle and high income countries as well as being from North, Central and South America. With some exceptions these countries are also usually included in all major measures of the rule of law.

3. Mapping Current Rule of Law Measures

3.1 An overview of international indices and surveys of the rule of law

Although there are relatively few indices or surveys focusing exclusively on the rule of law (the exception being the World Justice Project's *Rule of Law Index*) there are a number of high quality and accepted international measures that include and incorporate a significant number of rule of law indicators. Of these measures a large proportion also contain business related rule of law indicators. These measures range from single issue or single discipline measures such as Transparency International's *GCB* and the World Justice Project's *Rule of Law Index* to wider measures of economic competitiveness and economic freedom such as the World Economic Forum's *Global Competitiveness Report* and Heritage Foundation's *Index of Economic Freedom*.

As was explained in sub-section 1.2 this report has two primary purposes:

1. to map, understand and analyze the extent to which existing international indices and surveys of legal and regulatory environments include indicators and measure areas of rule of law as they relate to business; and
2. extract and amalgamate into the GBRLD those relevant indicators of the rule of law as it relates to business comparing a regional sample of countries.

The previous section detailed the methodology behind the building of the GBRLD. The first step of that process was described as the "Mapping" stage and applies equally to the building of the GBRLD as it does to the first purpose of this report: that is, mapping the extent to which current indices and surveys include indicators and measure areas of rule of law as they relate to business.

Using the definitions provided by the U.S. Chamber of Commerce and listed above in Table 1, this section provides the "Mapping" results for all indices and surveys

deconstructed and mapped. The results of the latter two phases of the methodology outlined in sub-section 2.3 (“Extracting” and “Combining”) and the results of the GBRLD are described separately below in section 4.

3.2 Headline results

Each index or survey was deconstructed using the same “Mapping” methodology described above. Although a total of twelve measures were initially included in the sample only seven of these sampled measures were deconstructed.⁵ Table 2 states which indices and surveys were analyzed and form part of the sample.

Table 2: Measures sampled

1. World Economic Forum: <i>The Global Competitiveness Report 2012-13</i>
2. The World Justice Project: <i>Rule of Law Index 2012-13</i>
3. Transparency International: <i>Global Corruption Barometer</i>
4. Transparency International: <i>Bribe Payers Index</i>
5. Transparency International: <i>Corruption Perceptions Index</i>
6. Transparency International: <i>Putting Corruption Out of Business Survey</i>
7. Freedom House: <i>Freedom in the World</i>
8. Heritage Foundation: <i>Index of Economic Freedom 2013</i>
9. Global Integrity: <i>Global Integrity Index</i>
10. World Bank: <i>Worldwide Governance Indicators</i>
11. The World Bank and the International Finance Corporation: <i>Doing Business 2013</i>
12. Millennium Challenge Corporation: <i>Selection Criteria and Methodology</i>

Out of these twelve, seven indices and surveys were deconstructed for the purposes of the “Mapping” phase.

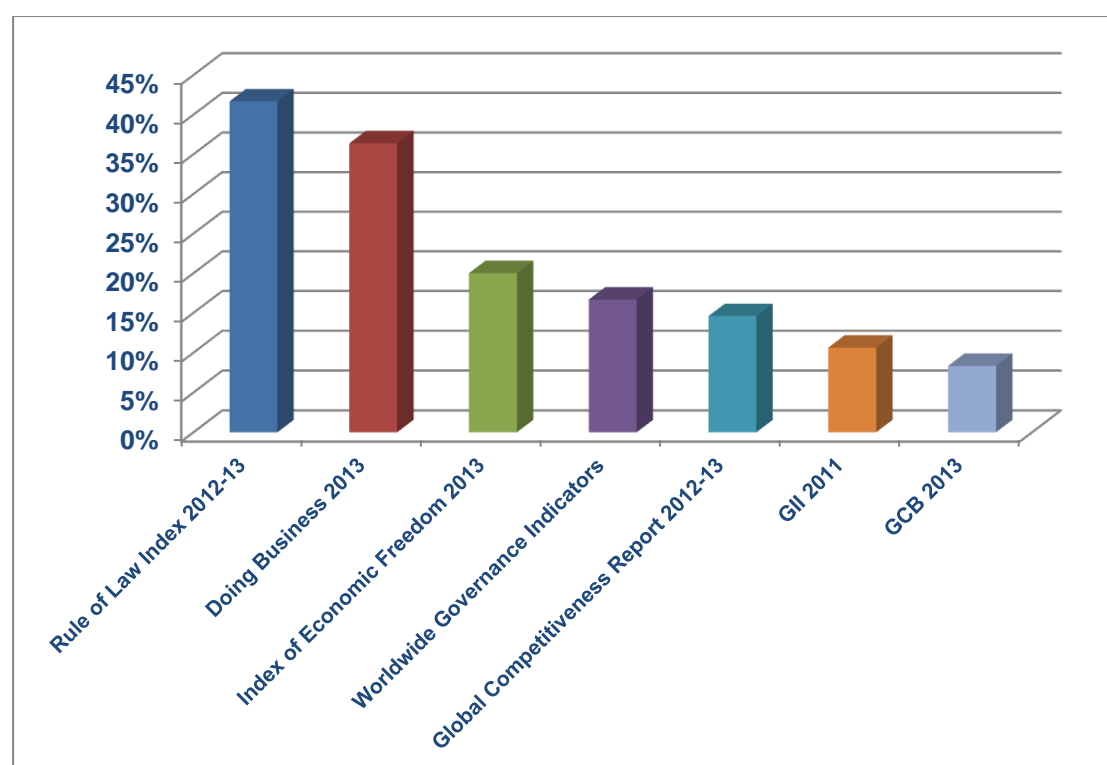
Below Table 3 summarises the results of the mapping exercise. The table shows, first, the total number of rule of law indicators as they relate to business in each of the measures deconstructed and, second, the total number of rule of law and business indicators as a percentage of total available indicators.

Table 3: Number of rule of law business related indicators mapped

Measure	Number	Percentage of all available indicators
<i>The Global Competitiveness Report 2012-13</i>	21	14.58%
<i>Rule of Law Index 2012-13</i>	20	41.67%
GCB 2013	1	8.33%
<i>Index of Economic Freedom 2013</i>	2	20.00%
GII 2011	34	10.63%
<i>Worldwide Governance Indicators</i>	1	16.67%
<i>Doing Business 2013</i>	4	36.36%

Figure 2 shows the number of rule of law indicators as a percentage of total indicators in the index or survey relating to business in each of the measures deconstructed.

Figure 2: Indicators: Number of rule of law business indicators, % of available indicators



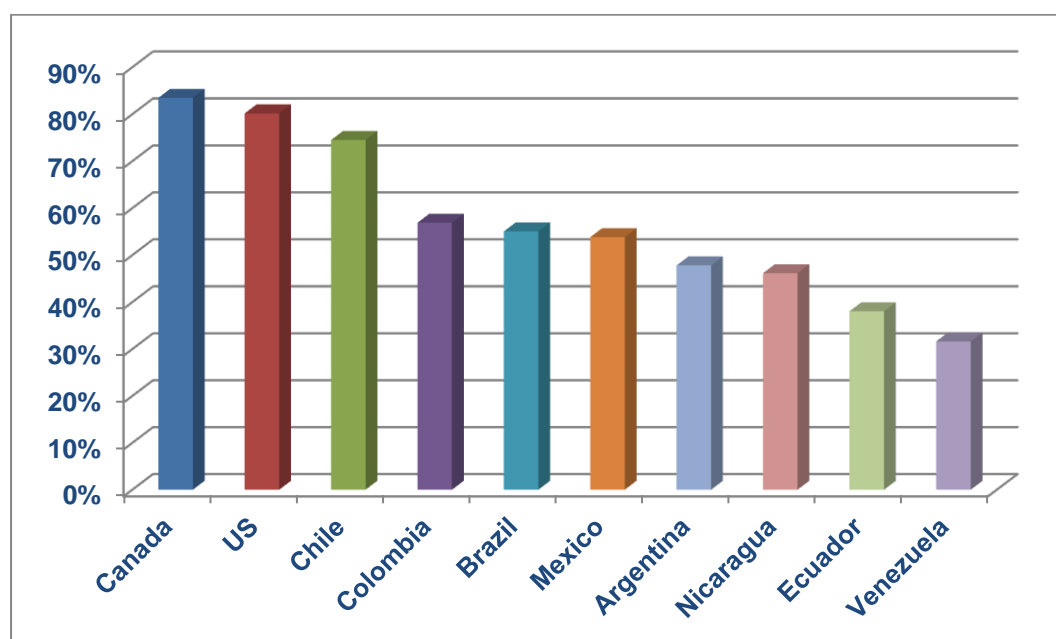
4. The Global Business Rule of Law Dashboard

The preceding section has described the results of the mapping exercise. It has detailed the methodology used in all the measures surveyed, the number of total indicators in each index or survey and, most importantly, the number of rule of law and business indicators mapped and extracted for the GBRLD. The purpose of this section is to build on this discussion by showing, first, the overall results of the GBRLD and country-by-country comparisons and, second, results for each measure and rule of law and business categories/indicators extracted

4.1 Overall results

Below figure 3 displays the overall results for the GBRLD for the country sample of the Americas. These are the results of extracting and combining all relevant rule of law and business indicators for the 10 countries examined from six out of the seven measures mapped in section 3. All measures are included bar Transparency International's GCB which due to methodological inconsistencies could not be included in the overall GBRLD.⁶ Results for the GCB are presented separately in Appendix I. The results are presented as a percentage of the available scores which for all measures and indicators extracted were standardised to a number between 0-100 as detailed above in section 2.

Figure 3: GBRLD: Overall results, the Americas, % available score



The results show how the rule of law as it relates to business is the strongest in North America and Chile; displaying some challenges in Colombia, Brazil and Mexico; and significant weaknesses in Argentina, Nicaragua, Ecuador and Venezuela. As one would expect, broadly speaking, the results correlate and follow the results of the indices and surveys examined and upon which the GBRLD is built. Nevertheless, as the following sub-sections illustrate there are significant discrepancies and differences in country results from measure to measure and indicator to indicator.

4.2 World Economic Forum: *The Global Competitiveness Report 2012-13*

As described above in sub-section 3.3, 21 indicators were mapped, extracted and included in the GBRLD from the *Global Competitiveness Report*. Below figures 4-11 show, firstly, the overall country results for these 21 indicators and, secondly, the results for each of the seven categories these indicators were divided into within the *Global Competitiveness Report*.⁷

Figure 4: *Global Competitiveness Report 2012-13*, overall % available score, indicators extracted

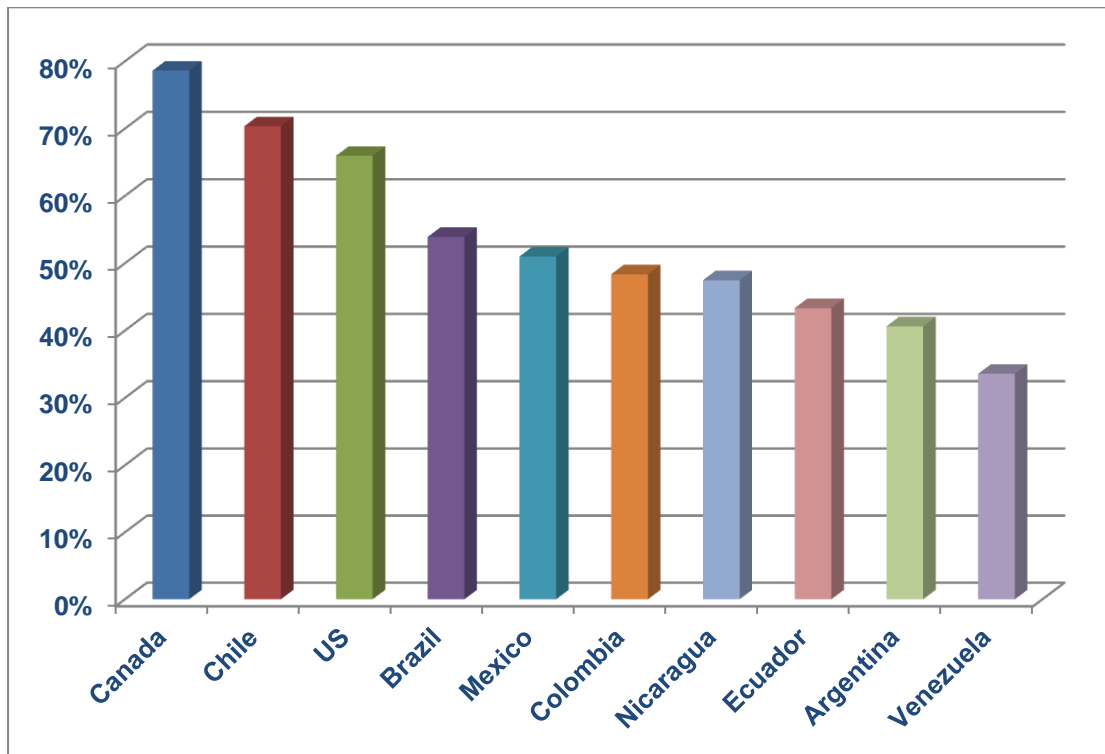


Figure 5: *Global Competitiveness Report 2012-13*, overall % available score, indicators extracted, category 1: Property Rights

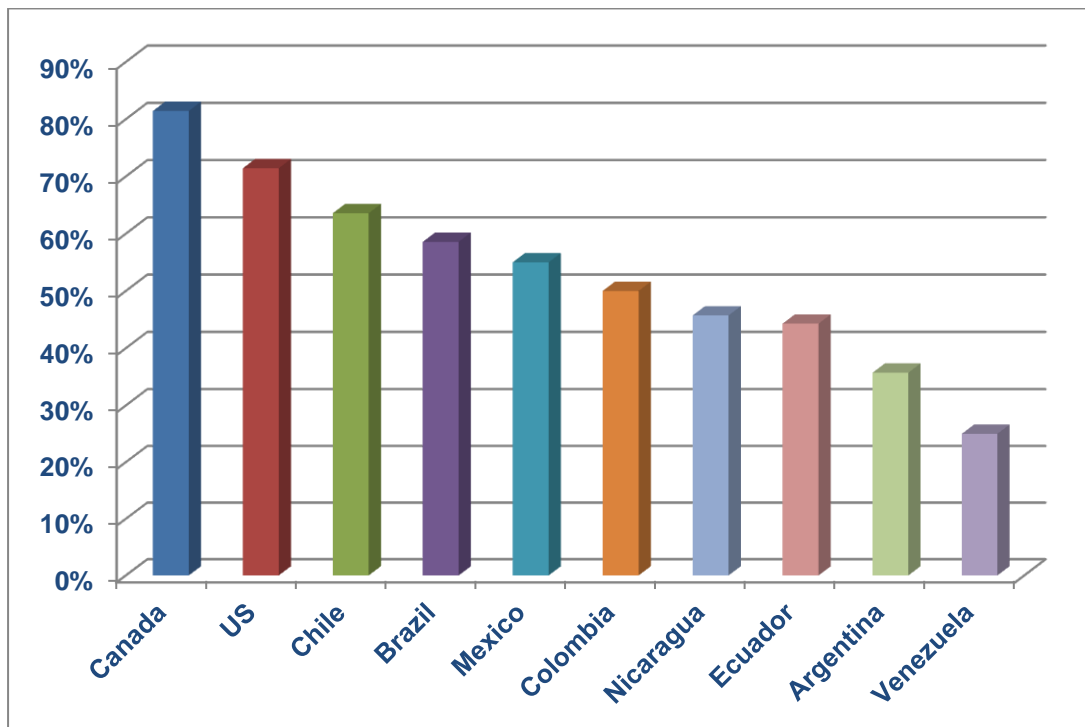


Figure 6: *Global Competitiveness Report 2012-13*, overall % available score, indicators extracted, category 2: Ethics and Corruption

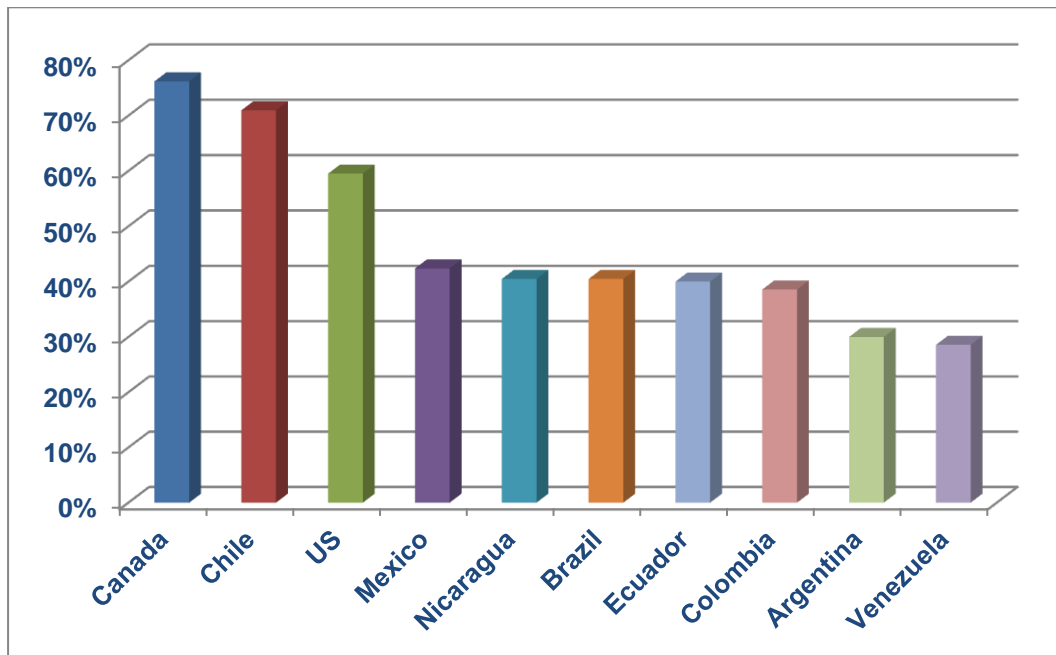


Figure 7: *Global Competitiveness Report 2012-13*, overall % available score, indicators extracted, category 3: Undue Influence

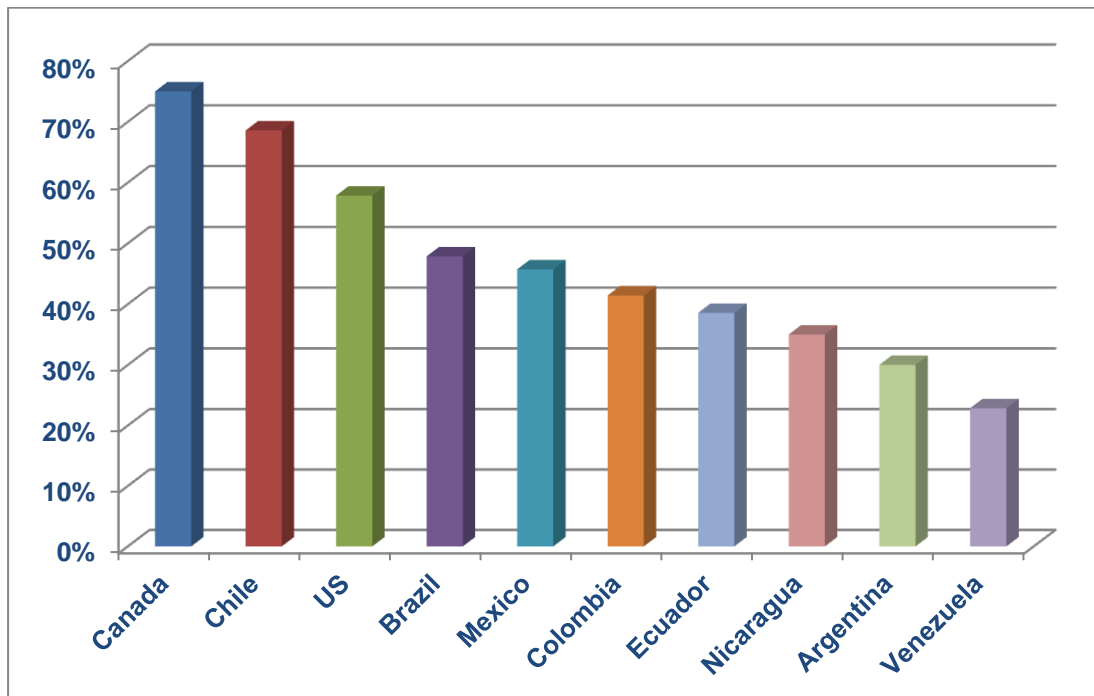


Figure 8: *Global Competitiveness Report 2012-13*, overall % available score, indicators extracted, category 4: Government Efficiency

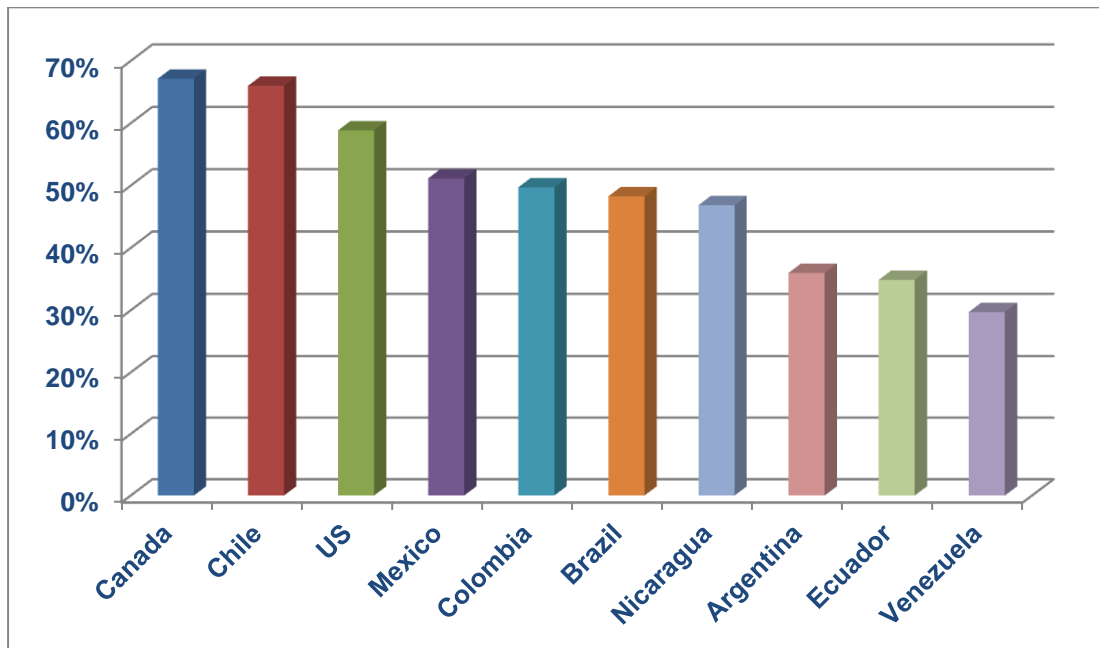


Figure 9: *Global Competitiveness Report 2012-13*, overall % available score, indicators extracted, category 5: Security

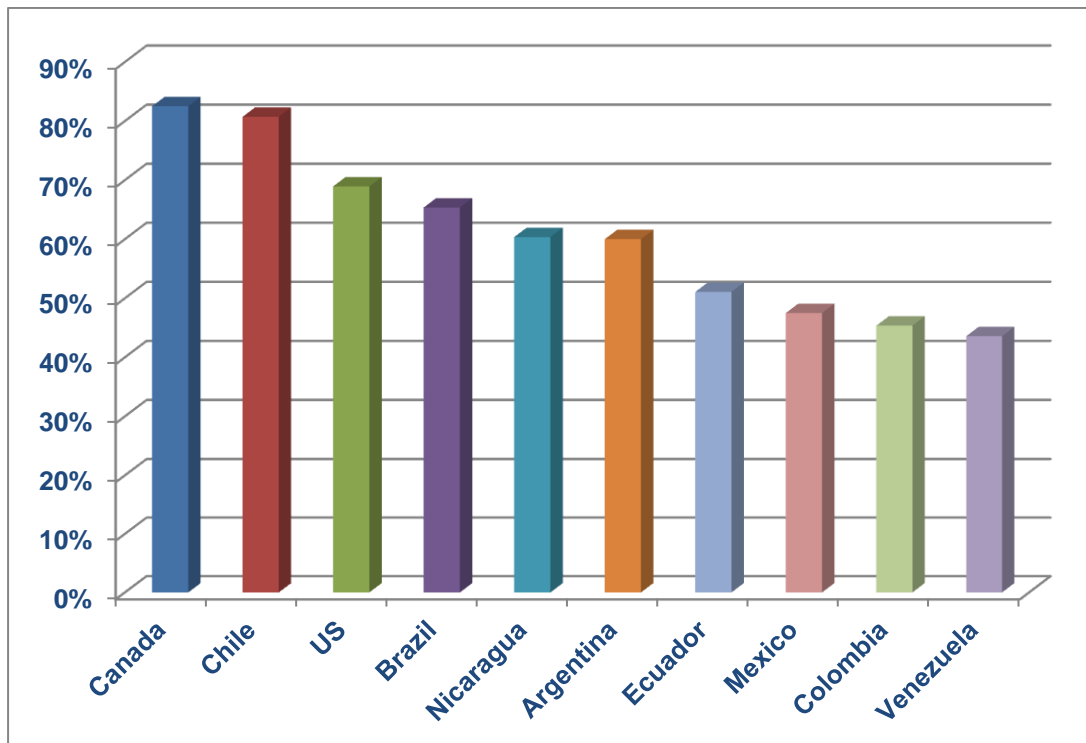


Figure 10: *Global Competitiveness Report 2012-13*, overall % available score, indicators extracted, category 6: Corporate Ethics

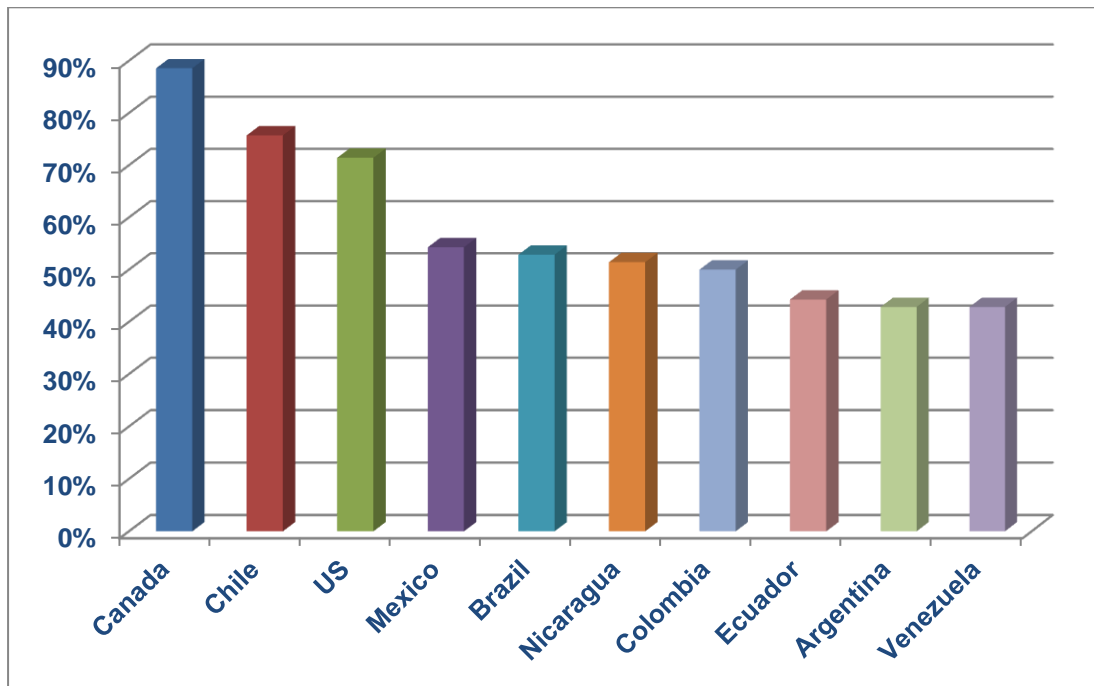
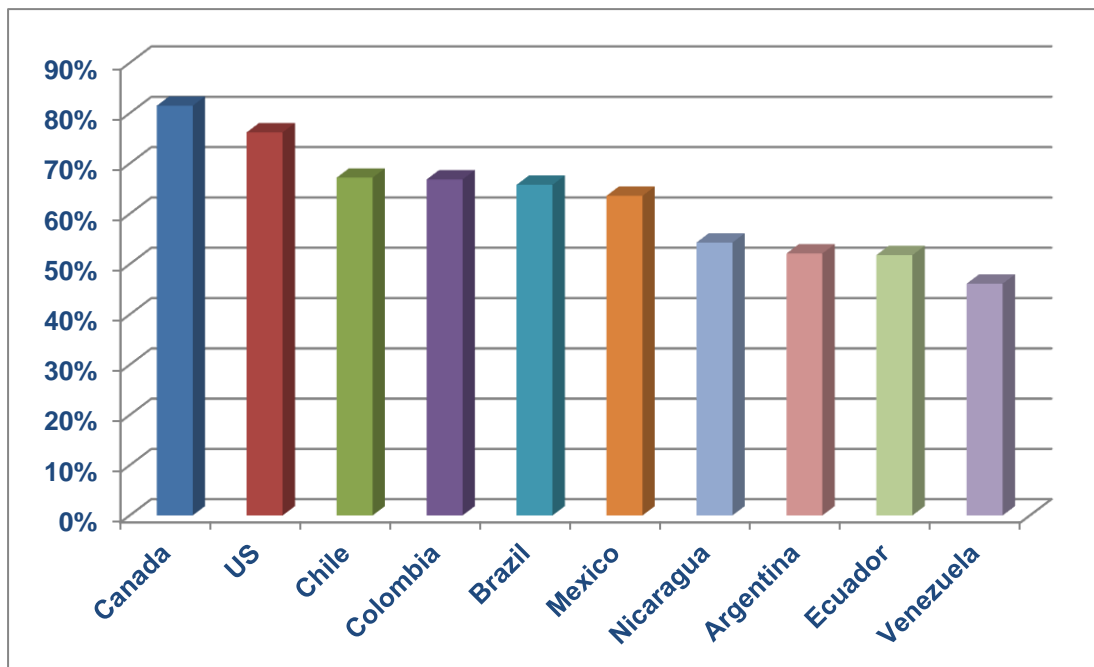


Figure 11: *Global Competitiveness Report 2012-13*, overall % available score, indicators extracted, category 7: Accountability



4.3 The World Justice Project: *Rule of Law Index 2012-13*

As described above in sub-section 3.4, 20 indicators were mapped, extracted and included in the GBRLD from the *Rule of Law Index*. Below figures 12-16 displays firstly, the overall country results for these 20 indicators and, secondly, the results for each of the four categories these indicators were divided into within the *Rule of Law Index*.

Figure 12: *Rule of Law Index 2012-13*, overall % available score, indicators extracted

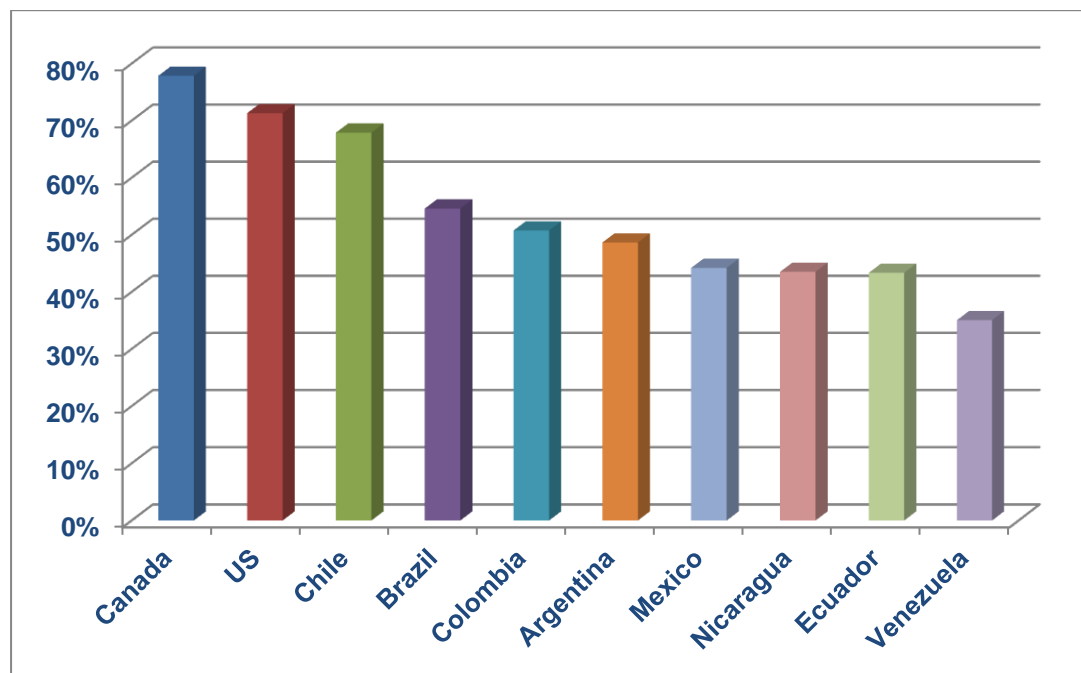


Figure 13: Rule of Law Index 2012-13, % available score, indicators extracted, category 2: Absence of Corruption

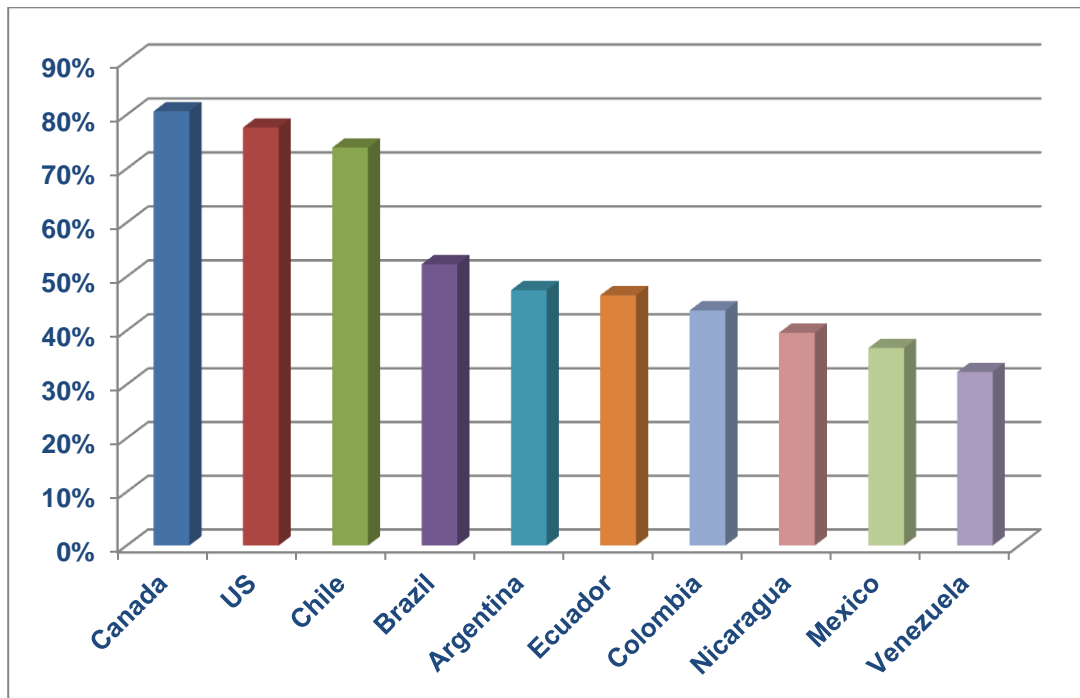


Figure 14: Rule of Law Index 2012-13, % available score, indicators extracted, category 5: Open Government

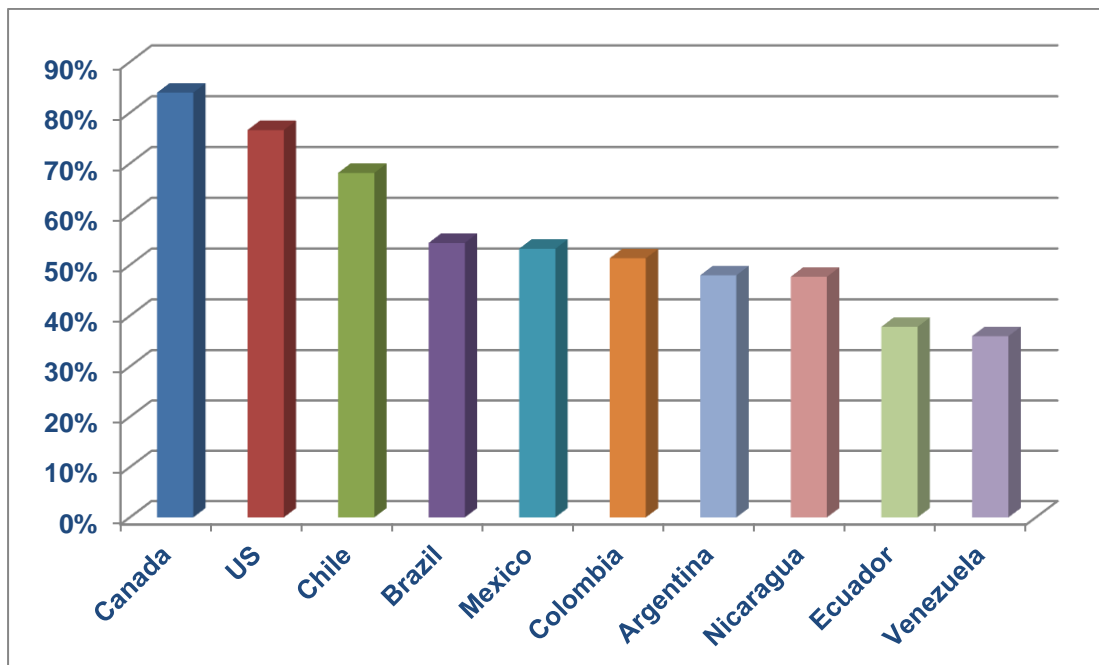


Figure 15: Rule of Law Index 2012-13, % available score, indicators extracted, category 6: Regulatory Enforcement

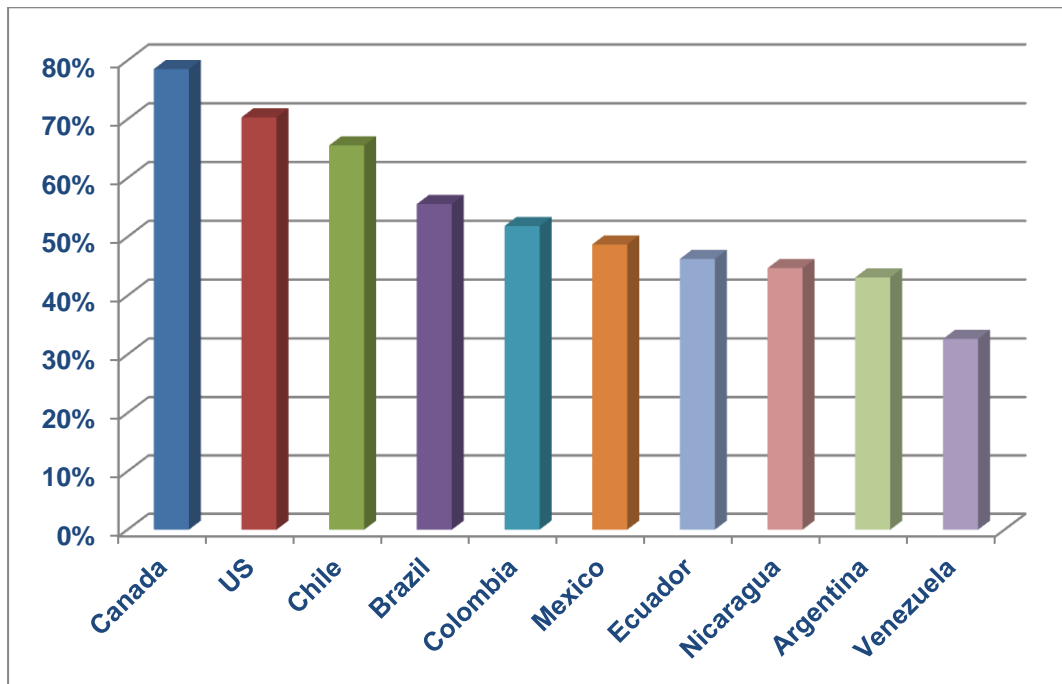
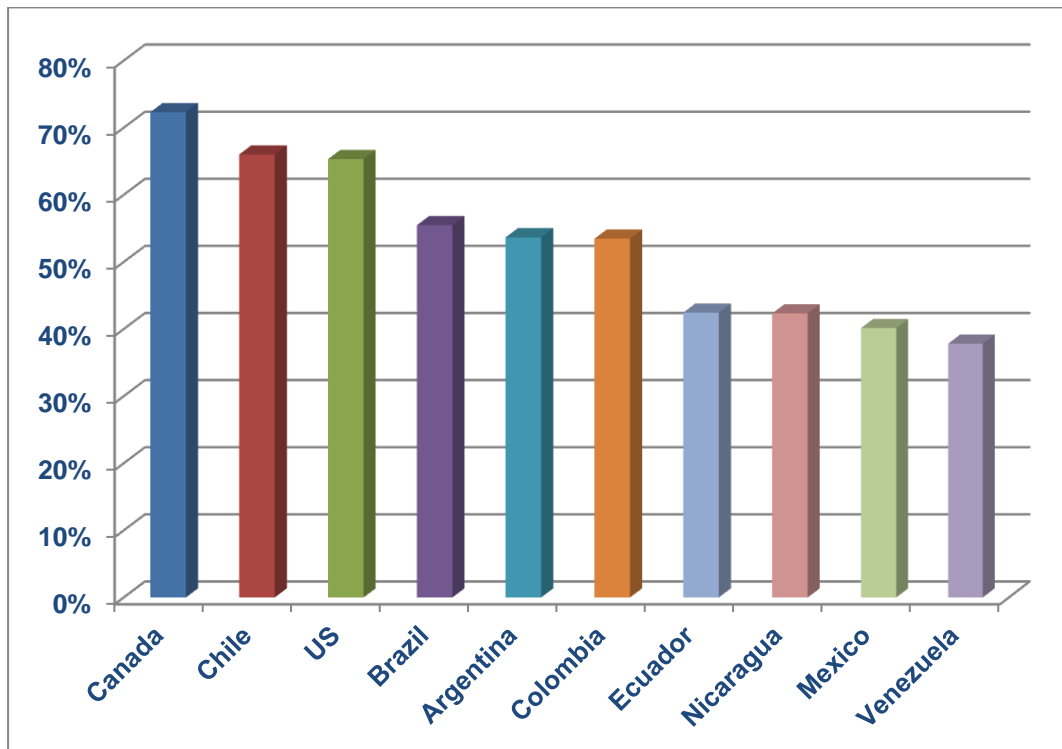


Figure 16: Rule of Law Index 2012-13, overall % available score, indicators extracted, category 7: Civil Justice



4.4 Heritage Foundation: *Index of Economic Freedom 2013*

As described above in sub-section 3.6, two indicators were mapped, extracted and included in the GBRLD from the *Index of Economic Freedom*. Below figures 17-19 display the overall country results and results for the two indicators separately.

Figure 17: *Index of Economic Freedom 2013*, overall % available score, indicators extracted

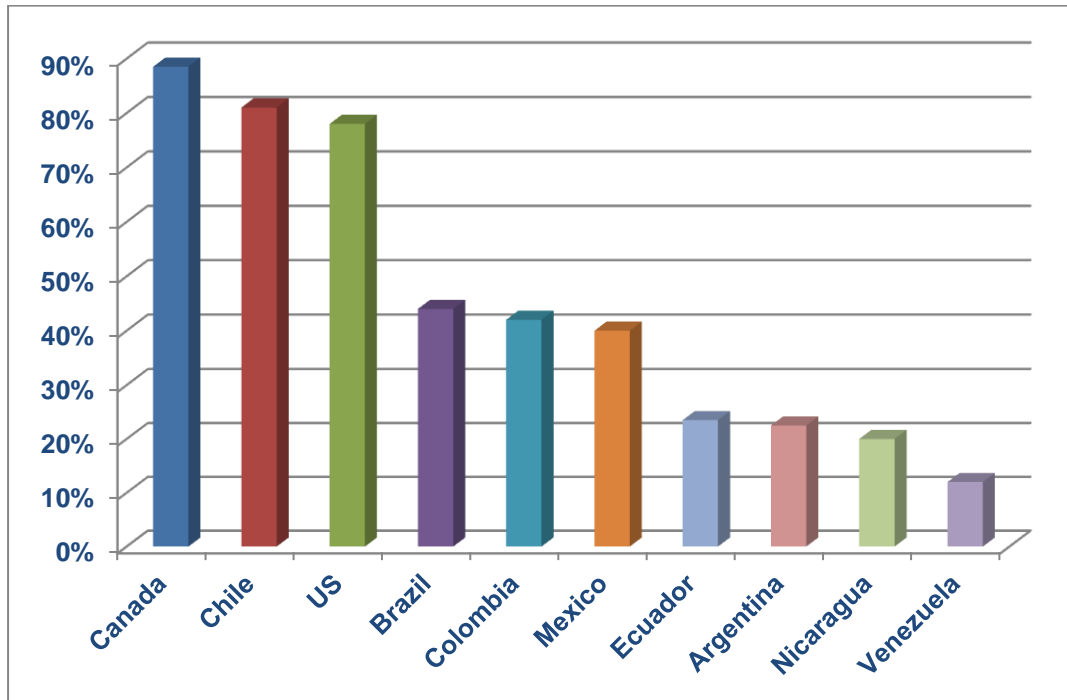


Figure 18: *Index of Economic Freedom 2013*, overall % available score, indicators extracted, indicator 1: Property Rights

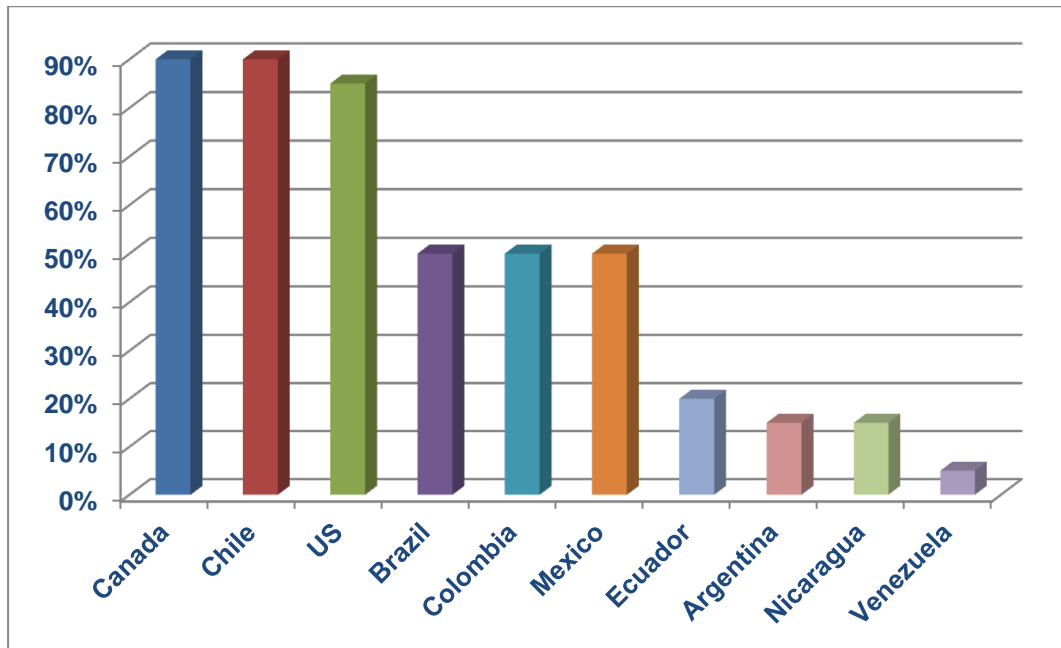
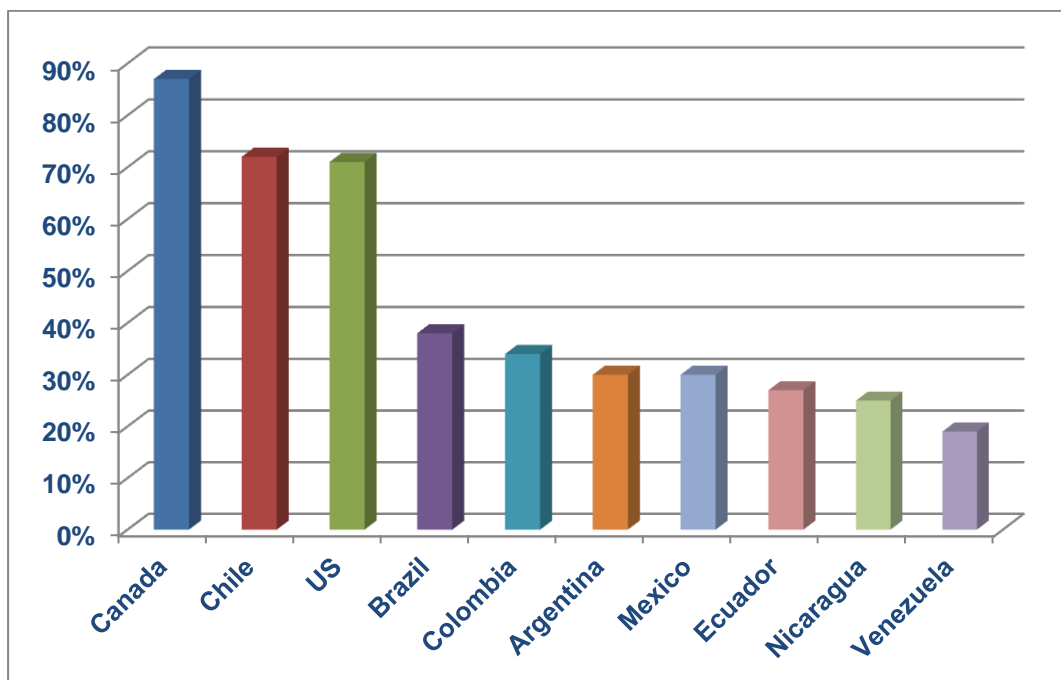


Figure 19: *Index of Economic Freedom 2013*, overall % available score, indicators extracted, indicator 2: Freedom from Corruption



4.5 Global Integrity: *Global Integrity Index 2011*

As described above in sub-section 3.7, 34 indicators were mapped, extracted and included in the GBRLD from the *Global Integrity Index*. Below figures 20-23 display, firstly, the overall country results for these 34 indicators and, secondly, the results for each of the three categories these indicators were divided into within the GII.⁸

Figure 20: *Global Integrity Index 2011*, overall % available score, indicators extracted

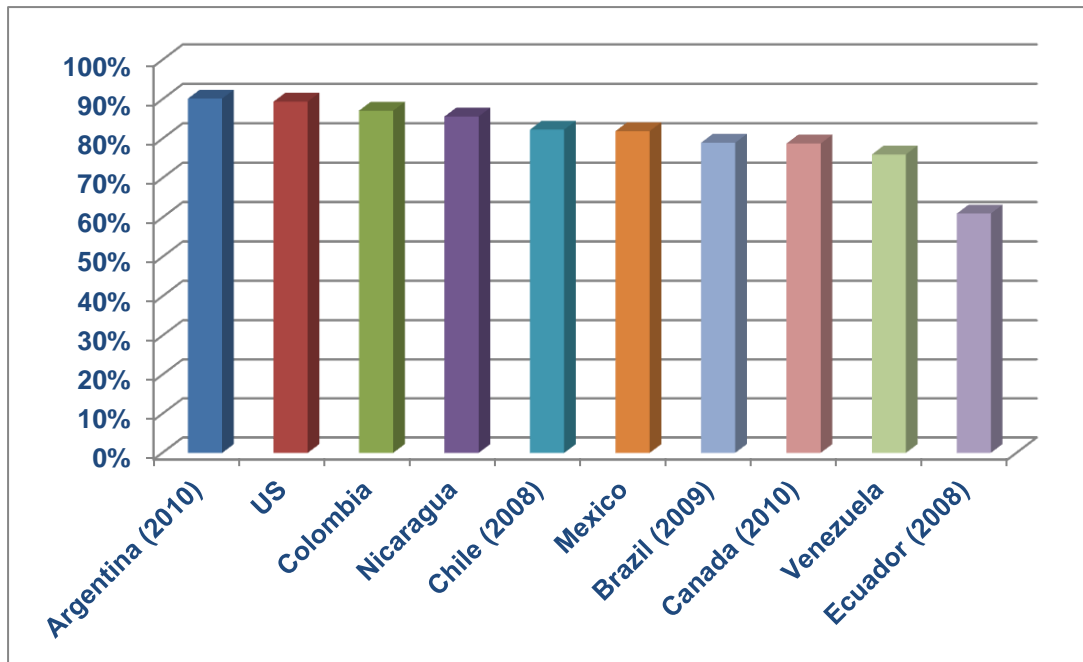


Figure 21: *Global Integrity Index 2011*, overall % available score, indicators extracted, category 4: Public Administration and Professionalism (Procurement)

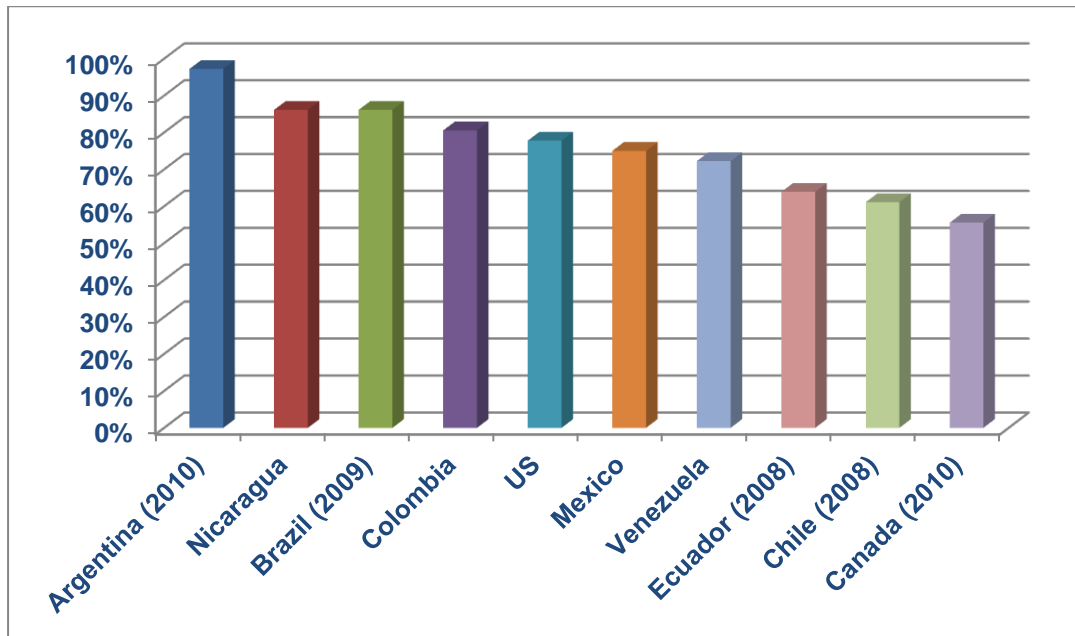


Figure 22: *Global Integrity Index 2011*, overall % available score, indicators extracted, category 5: Government Oversight and Controls (Business Regulations and Licenses)

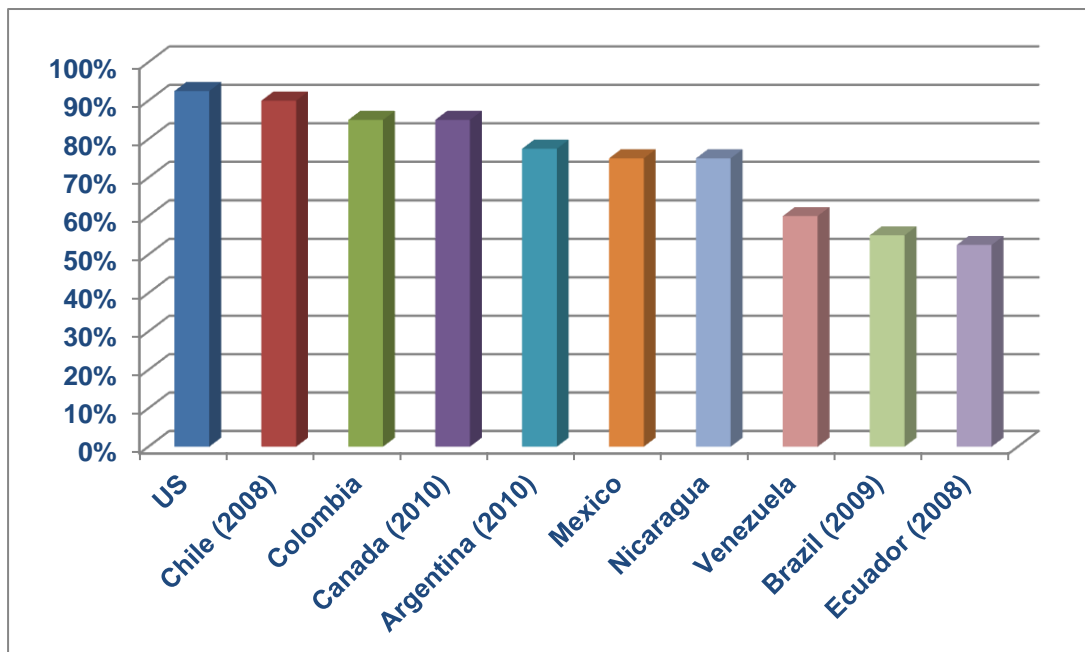
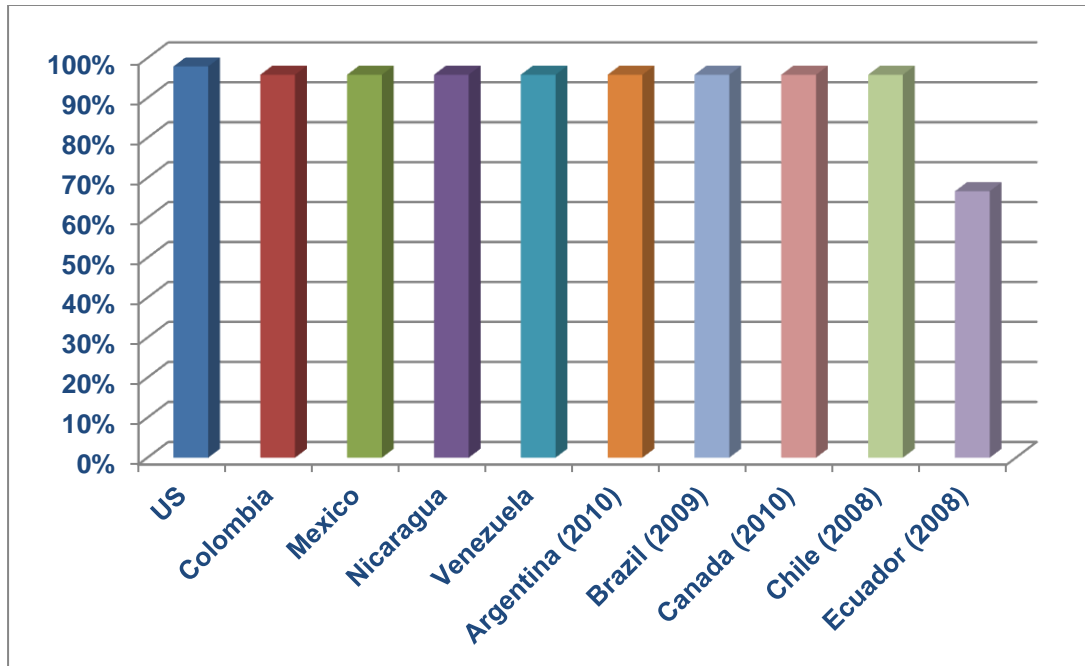


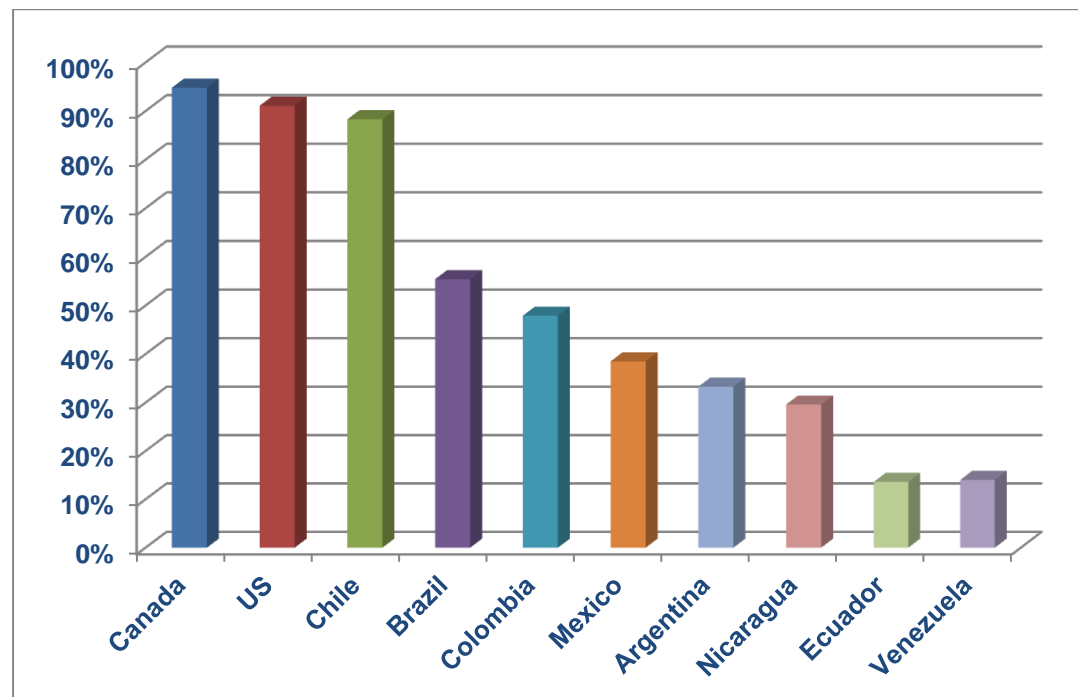
Figure 23: *Global Integrity Index 2011*, overall % available score, indicators extracted, category 6: Anti-Corruption Legal Framework, Judicial Impartiality, and Law Enforcement Professionalism



4.6 World Bank: *Worldwide Governance Indicators*

As described above in sub-section 3.8, due to the construction and nature of the WGI indicators the entire category pertaining to the rule of law (which made up 1/6th of the WGI indicators and overall governance score) was extracted and included in the GBRLD. Below figure 24 shows the percentile rankings of the regional sample of countries.

Figure 24: *Worldwide Governance Indicators, overall % available score, indicators extracted*



4.7 The World Bank and the International Finance Corporation: *Doing Business 2013*

As described above in sub-section 3.9, four indicators were extracted and included in the GBRLD from the *Doing Business 2013*. Below figures 25-29 display the overall country results for these four indicators combined as well as the scores for each individual indicator.

Figure 25: *Doing Business 2013*, overall % available score, indicators extracted

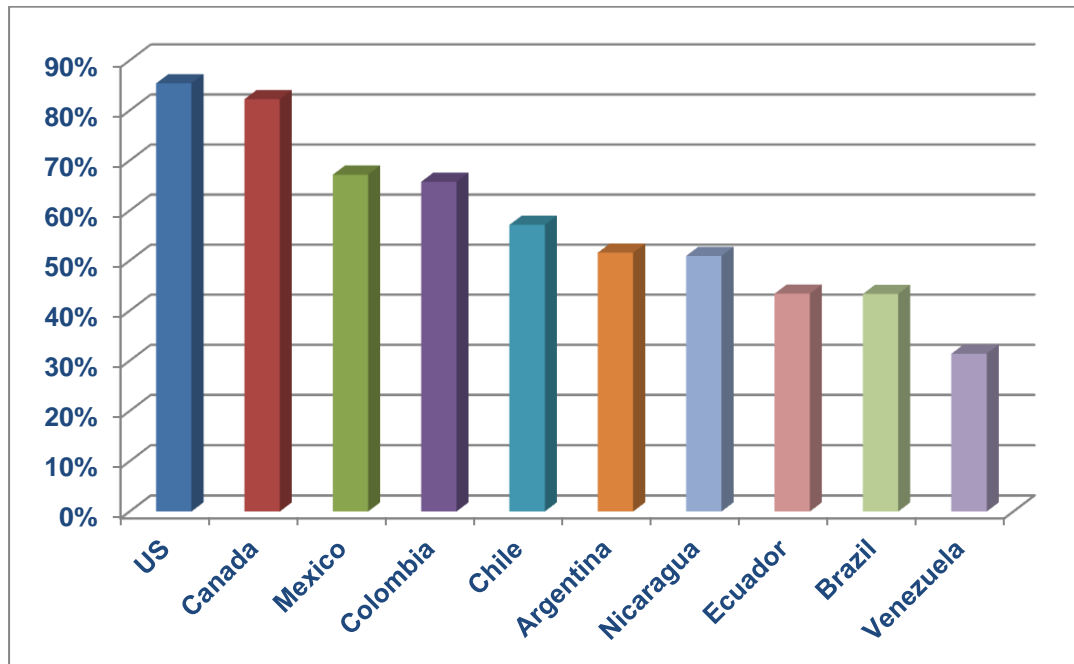


Figure 26: *Doing Business 2013*, overall % available score, indicators extracted, indicator 7: Getting Credit

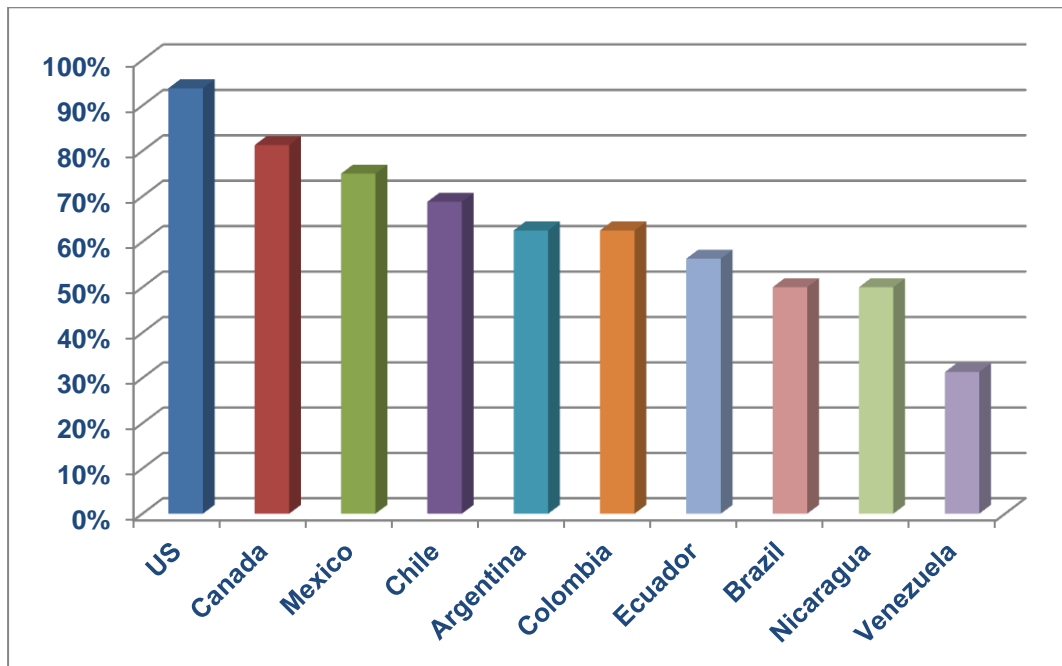


Figure 27: *Doing Business 2013*, overall % available score, indicators extracted, indicator 8: Protecting Investors

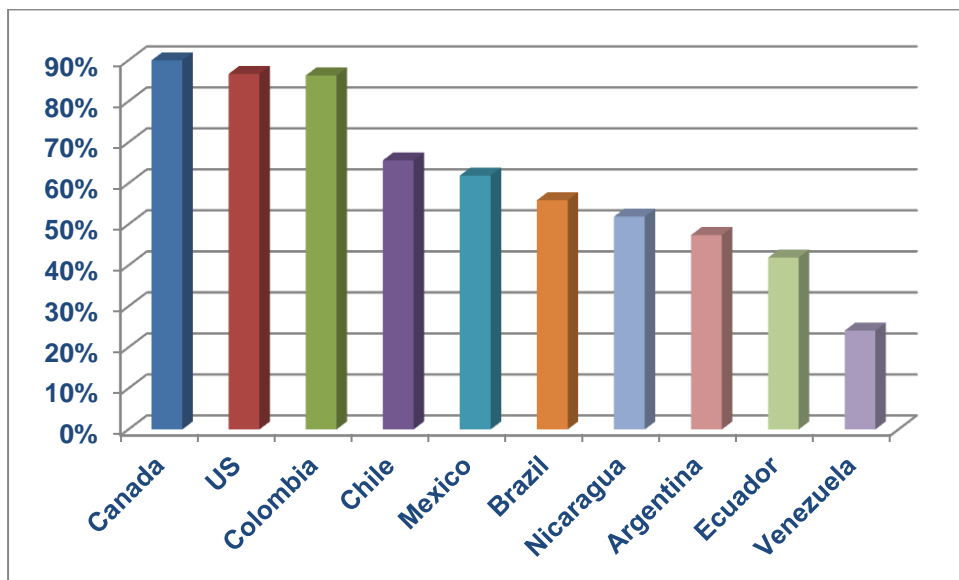


Figure 28: *Doing Business 2013*, overall % available score, indicators extracted, indicator 9: Enforcing Contracts

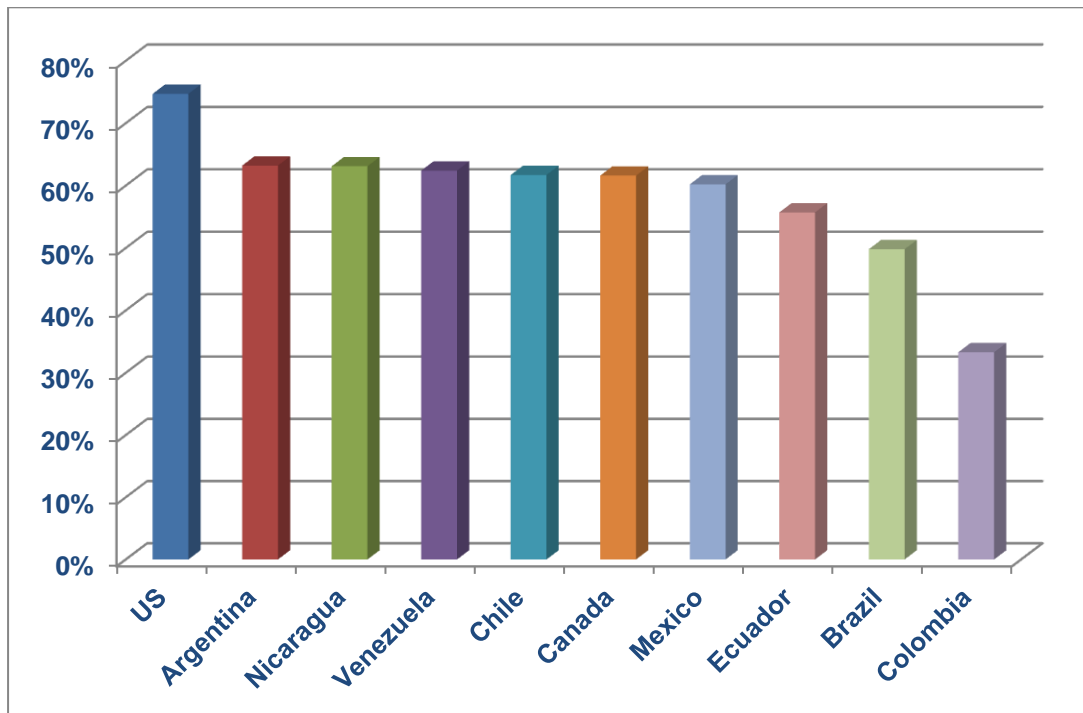
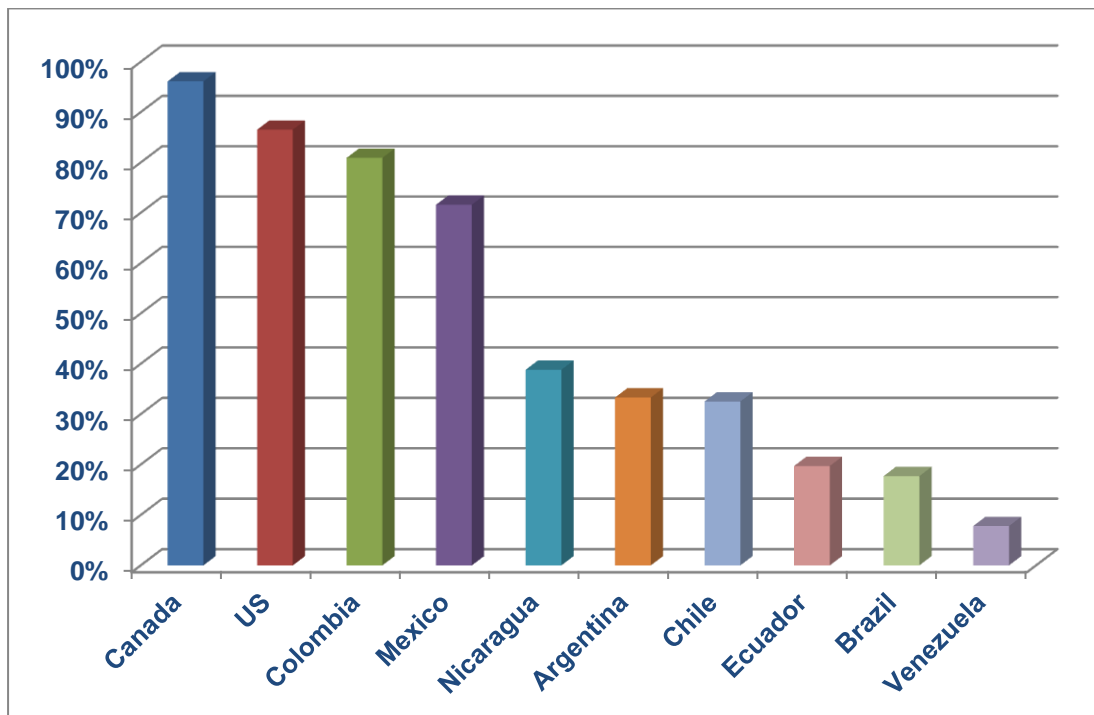


Figure 29: *Doing Business 2013*, overall % available score, indicators extracted, indicator 10: Resolving Insolvency



5. Conclusions and Next Steps for Further Research

The purpose of this report has been twofold. First, to map, understand and analyze the extent to which existing international indices and surveys of legal and regulatory environments include indicators measuring areas of rule of law as they relate to business. And, second, to extract and amalgamate those relevant indicators into a composite meta-measure (the GBRLD) of the rule of law as it relates to business comparing a regional sample of countries. The preceding sections have described the results of that mapping, extraction and amalgamation exercise. The findings of the report can be distilled into two key areas:

- **Greater need for the business community to understand the coverage and meaning of existing rule of law indices and surveys, and their operational implications** – One of the key findings of this report is that each measure mapped seeks to assess different things: rule of law, economic competitiveness, rate of corruption, governance etc. Overall some indices and surveys have a greater degree of focus and specificity towards rule of law and business issues than others. See, for example, the *Global Competitiveness Report*, *Rule of Law Index* and GII. It is of real importance for the business community to gain greater insight and a detailed picture of exactly how the mapped indices and surveys work, what they measure and the manner in which the indicators measured can be used in a concrete, practical and operational manner by businesses on the ground.
- **Gaps relating to the practical on-the-ground rule of law needs of business** – Given that they are often only a small part of the overall findings of existing measures, business related rule of law indicators are often overlooked or submerged into the overall findings of a given index or survey. Although, it should be noted that this lack of specificity or focus on business related indicators is **not** a weakness or criticism of existing measures; it is not the

purpose of these individual measures to focus exclusively on rule of law and business indicators.

Based on these findings it is clear that the GBRLD fills a void and is a first step in a process of consistently mapping, identifying and emphasizing business related rule of law indicators. Extracting and combining key indicators on rule of law business issues to form the GBRLD both reveals and emphasizes data and results that are often lost in the wider work of the mapped measures. Relying on existing robust data, combining extracted rule of law and business specific indicators together into the GBRLD provides a unique and focused analytical tool for understanding the rule of law environment as it relates to business on a country by country basis.

Although the GBRLD does fill a role and void in the existing research there are limitations. To complement existing work the inclusion of new and more detailed rule of law business indicators in existing measures would strengthen the overall body of research and understanding of the rule of law as it relates to business.

The following two sub-sections will discuss these findings in the context of, first, gaps in the current research, and, second, the GBRLD within the context of public policy in the Americas.

5.1 Mapping the rule of law and business: Gaps in the current research

There is currently no original index or survey of the rule of law as it relates to business. Instead, as preceding sections of this report have found, there are a number of indices and surveys that incorporate indicators relating to the rule of law and business to a greater or lesser degree. In sub-section 2.1 five factors defining the rule of law and business developed by the U.S. Chamber of Commerce were cited and described. In addition to these five factors the U.S. Chamber has identified seven areas of rule of law and business that are critical to the decision-making process within a business environment Below Table 10 cites these areas.

Table 10: Critical areas of rule of law and business, U.S. Chamber of Commerce, 2013⁹

- i) Corruption and bribery, specifically as they apply to government procurement and other business activities
- ii) Regulatory and policy trade barriers, such as the adoption of protectionist measures
- iii) Existence and enforcement of real property and intellectual property protection laws
- iv) Adherence to trade, investment, and tax treaties or agreements
- v) Resolution of business disputes and outcomes
- vi) Transparent government policymaking
- vii) Adherence to litigation and international arbitration rulings regarding sanctity of contracts and agreements and the expropriation of land, facilities, or businesses

Looking at the indices and surveys mapped in this report it is clear that not all of these areas identified as critical by the U.S. Chamber to the rule of law and business are currently being measured. For example, although both areas 1 and 3 (relating to corruption in public procurement and the existence and enforcement of property laws, respectively) are measured relatively extensively in five of the seven mapped indices and surveys, no index or survey includes indicators directly relevant to areas 4 and 7. Similarly, areas 2, 5 and 6 overall receive only partial coverage with fewer than 50% of the indices and surveys mapped including indicators relating to these areas. (See Appendix II for full details and an overview of each index and survey mapped in this report.)

Based on these findings two improvements can be made that together would strengthen the current body of research:

- the addition of new rule of law and business indicators in the areas identified to existing indices and surveys; and
- expanding the number of indices and surveys that include and measure both existing rule of law and business indicators as well as developing new such indicators.

5.2 The Global Business Rule of Law Dashboard and public policy: Recommendations for the Americas

The GBRLD illustrates how there is great variety in the depth and coverage of the rule of law environment as it relates to business in the countries sampled. Generally, the trio of Canada, the U.S. and Chile was found to have a relatively more robust environment than some countries such as Venezuela, Ecuador, Argentina and Nicaragua, which faced a number of key challenges in areas including the protection of property rights, resolving insolvency, corruption and undue influence. Other countries, such as Mexico and Colombia, faced challenges in areas relating to security.

The following recommendations attempt to take these differences into account and provide recommendations and principles that could be followed in strengthening the rule of law environment as it relates to business in the region. Given the existence of a broad and robust body of policy analysis and recommendations on the rule of law more generally (including on the importance of eradicating corruption, the use of due process and implementing a fair and transparent rules based system of governance) these recommendations focus primarily on specific operational business related rule of law challenges.

- **Greater emphasis and appreciation of the operational aspects of rule of law issues relating to business** – Identifying and acting on specific operational rule of law impediments and challenges to business are of critical importance to stimulating local enterprise and commerce as well as attracting and maintaining international investment. This includes improving performance and environments in areas of contract enforcement, insolvency proceedings and use of due process and transparency in government rule-making.
- **More coordination and training** – Many different areas of government activity impact the rule of law environment for businesses. More often than not these areas of activity are disparate and across many governmental authorities. Greater coordination and training of civil servants and officials on

business concerns could prove to be helpful in improving the rule of law and business environment.

- **Increased dialogue and consensus building with business and other relevant stakeholders built around empirical and evidence-based research**
 - Communication between the business community (international and national) and government at all levels is absolutely vital for furthering the interests of commerce and enterprise as well as wider economic growth and development. Engaging in a dialogue based on empirical evidence (such as the GBRLD and the mapping of national rule of law and business environments in relation to other countries) is more likely to lead to greater understanding and consensus between government, the business community and other stakeholders.

¹ UN, “High-level Meeting on the Rule of Law, 24 September 2012”, (Accessed August 2013), http://www.unrol.org/article.aspx?article_id=168

² T. Carothers (2009), “Rule of Law Temptations”, *Fletcher Forum of World Affairs*, Vol. 33: 1 Winter/Spring 2009.

³ Carothers (2009). See also *The Economist*, March 13 2008, “Economics and the rule of law – Order in the jungle”, (Accessed September 2013), <http://www.economist.com/node/10849115>

⁴ M. Brilliant (2013), “Good Business Demands Good Governance”, in *Index of Economic Freedom 2013*, Heritage Foundation, pp. 82-3.

⁵ There were two primary reasons why the remaining five measures were not included in the deconstruction sample: i) a lack of publicly available data on the methodology and resources used in individual measures; and ii) reliance and overlap with other indices and surveys included in the sample.

⁶ The latest edition, 2013, of the *Global Corruption Barometer* does not include two of the countries sampled, Ecuador and Nicaragua. The most recent edition of the Barometer that includes Ecuador is from 2007. However, it is not possible to amalgamate the results from that edition of the survey with subsequent editions since although the survey questions have by and large remained the same the institutions surveyed for perceptions of corruption have changed. Specifically, the 2007 edition does not include a separate category for “Public officials/Civil servants” which is one of the institutions extracted and amalgamated into the overall results of the Dashboard.

⁷ K. Schwab (2012), pp. 46-7.

⁸ The most recent GII from 2011 does not cover all of the countries included in the regional sample. However, the GII does extend back to the mid-2000s and previous editions of the index include all countries from the regional sample. Unlike the *Global Corruption Barometer* described above, the survey questions and indicators used and extracted for the purposes of the GBRLD have stayed the same and thus it is possible to extract and combine these indicators into the GBRLD from previous editions of the GII. Unless otherwise stated all countries extracted are from the 2011 edition of the GII.

⁹ M. Brilliant (2013), p. 84.