

JUSTICE INDICATORS FOR STATE AND NATIONAL USE- THE LAGOS STATE EXPERIENCE*

Background

Nigeria returned to civil rule in May 1999, after about 30 years of military rule. One of the worst consequences of military rule was the deliberate weakening of all justice institutions.

Lagos State, (estimated population is 16 million), is the most populous of Nigeria's Federation of 36 States and its commercial and industrial nerve centre. It also has the largest judiciary, with 52 courts in the High Court division and 118 courts in the Magistrates' division, the largest number of policemen and the largest Ministry of Justice.

At its inception in 1999, the new civilian administration in Lagos State began a comprehensive justice sector reform programme.¹ A central objective of the reform programme was the restoration of public confidence in the judiciary which going by anecdotal evidence and some empirical surveys was at its lowest ebb. It appeared at the time, that the major reasons for the loss of public confidence were the perception that the judiciary, especially judges and magistrates were corrupt² and the long delays in the trial process.

For the new state government, corruption was simply too costly. Foreign and local investment suffered. Few investors were prepared to risk entering into agreements, which if disputed would depend on the highest or most influential bidder to obtain a favourable outcome. Besides, the interminable delays caused by rules of practice that permitted dilatory tactics by counsel at little or no extra cost made investments in Nigeria and Lagos State unattractive. Anecdotal evidence from estate agents showed that there had been a decline in the stock of houses being built for rental purposes because tenants could corruptly influence a magistrate to keep a case of repossession endlessly in court, or until a forced settlement was secured. Banks were

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¹ Just prior to the inauguration of the civilian government, the writer was appointed Secretary to the Justice Policy Committee (JCP) established by the Governor-Elect, Bola Tinubu, a pro-democratic activist, who returned from exile, after the death of Abacha. The JCP was charged with developing the reform agenda. Subsequently, the writer was appointed Attorney-General and Commissioner for Justice of the State. In that capacity, he headed the reform implementation team. The team which consisted of representatives of civil society, bar associations, the Chief Judge and the state legislature, was dynamic in its composition, changing depending on what aspect of the reform was being implemented. Perhaps the most remarkable feature of the reform process was the keen collaboration of the judiciary, the legislature and civil society with the Attorney General's office. Usually, these entities were either battling over turf or simply mistrusting the others' intentions.

² The sheer impunity of judicial and official corruption generally did not help matters. In 1994, the Abacha Regime set up a panel of inquiry headed by the renowned retired Supreme Court Justice Kayode Eso to look into the activities of the judiciary in the country. The panel indicted 47 judges for alleged corruption, incompetence, dereliction of duty or corrupt use of ex parte orders. The government did not implement the report.

also unwilling to grant loans on the security of real estate because of the difficulties of realising such securities. A litigant could easily hold up the process of foreclosure by going to court to challenge the transaction. With a 'cooperative' judge the delay could be endless.

Measuring

It must be noted that while we (the policy implementation team) were keen to determine as accurately as possible the extent and character of these problems and systematically monitor and measure progress towards the objectives of the reform, the lack of reliable base data even on routine issues in the justice sector and the dearth of knowledge on tried and tested methods of objective measurement, made a rough and ready approach attractive. One which could hopefully at least give broad indications of what was sought. Consequently we employed a user perception survey of judicial corruption and delays in justice delivery. The option was made more attractive by its successful use in transparency in governance projects in the mid to late nineties. We designed a simple, structured questionnaire comprising eleven questions. The questionnaire was administered on 100 lawyers who regularly used the courts desegregated for years of experience at the bar. We also did a desk study of the length of time it took to conduct cases in the High Court of Lagos, from filing to final judgment using a sample of 200 cases. A similar survey was conducted for duration of cases which go through the Courts of Appeal to the Supreme Court.

The same questionnaire with slight modifications was administered in 2008 at the end of the tenure of the government.

Of 100 lawyers surveyed in the 1999 study:

99% agreed that there was corruption in the Lagos State Judiciary.

80% of lawyers between 11-15 years post call, agreed that the prevalence of corruption was high or very high.

Over 65% of lawyers between 11-15 years experience at the bar believed that confidence in the judiciary was very low.

90% of lawyers agreed that between judges, magistrates, lawyers, registry personnel and bailiffs, the level of corruption is highest in the magistracy. 2% said judges, 2% said lawyers, 6% said registry personnel and bailiffs.

Some of the factors identified as pre-disposing to corruption were:

- Poor remuneration of judicial officers and judges. Judges earned less than US\$300 a month, along with an official car and home, both of which were withdrawn on retirement. Magistrates earned about US\$50 a month. Neither official cars nor

accommodation was available. It was virtually impossible for an honest judge to buy or build a home from earnings alone.

- Long delays in the trial process constituted a significant problem as a cause and consequence of corruption, facilitating the corrupt use of judicial discretion.
- Appointments were based on cronyism. The absence of any objective merit-based system for appointment of judges meant that the calibre of judicial appointees was suspect.
- Ineffective sanctions for judicial corruption and low detection rates due to high tolerance levels across society. The Survey indicated that 40 % of lawyers surveyed would not report judicial corruption because they felt that nothing would be done; and 53% of lawyers with between 1 and 5 years post call experience would not report judicial corruption for fear of being victimised.

The results were presented to all justice sector stakeholders and several questions and concerns were raised especially by officials who felt that the public perception of them or their activities may have been too harsh. What was evident was that for the first time, justice sector officials were faced with some kind of report card from users and it least achieved the effect of giving the impression that their activities were being closely watched.

The desk study on the duration of cases in the courts revealed that:

- (i) There were 40,000 pending cases in the High Court of Lagos as at May 1999
- (ii) On the average:

Land Matters took	-	7 – 8 years to complete
Commercial Matters	-	3 – 4 years to complete
Family Cases	-	2 – 5 years to complete.

Administrative processes involved in instituting a case from filing to assignment to a judge took at least 6 weeks. The overall average for completion of cases was 4.25 years. These figures assumed that there would be no interlocutory appeals which could drag the process on for an additional 50% of the stipulated periods.

The reform agenda therefore focused on improving the results of these surveys substantially.

In dealing with judicial corruption, the project began with a review of the appointments procedure. A new process was introduced in Lagos State allowing for the participation of lawyers and the local bar association in the selection of judges. The bar association was required to write a confidential note to the state's Judicial Service Commission (JSC) on the suitability of each nominee for appointment in

terms of competence and integrity. After clearing nominees at state level, the National Judicial Council (NJC) scrutinises the list according to a set of objective criteria before making final recommendation for appointment. As at 2001, there were 26 vacancies in the High Court of Lagos, mostly due to retirement. This gave hope that the new appointees, selected under the objective criteria, would be more open to reforms aimed at combating corruption.

The 'millennium judges', as they were called, were taken through six weeks of training, comprising interactive sessions with bar associations, civil society groups and senior judges. The focus of these sessions was judicial integrity, public expectations of judicial conduct, the code of conduct for judges etc. The opportunity of being together for six weeks enabled judges to bond and develop some shared values. Today, examinations and interviews are also part of the judicial appointments procedure although the process does not yet amount to open competition since examinations are only applied to individuals who have already been nominated by the JSC.

Regarding compensation for judges and magistrates, the state government consulted human resources experts on an appropriate remuneration for judges, having regard to their status and what the private sector offered people of equivalent status. The result was a considerably enhanced package for judges and magistrates. Judges are now paid about US\$3,500 per month and are given a house worth US\$250,000 in a low-density neighbourhood, land worth about US\$50,000, a car and about US\$20,000 in shares in a blue-chip company. Magistrates earn about US\$300 a month at entry level and are entitled to a piece of land and a government car.

With regard to the discipline of judges, the reform policy dictated that every case of judicial corruption would be investigated and submitted to the NJC, which would then appoint an independent investigation panel to make recommendations. Prior to the NJC's creation in 1999, the JSC had been the sole adjudicator on disciplinary issues, providing an avenue for local interference in the process. Local interference has now been effectively removed since the NJC's membership is drawn from across all 36 States and the federal judiciary.³ As of 2002, three judges had been dismissed for corruption and 21 magistrates were laid off in a major reorganisation of the magistrates' courts. The JSC also investigated and sanctioned several cases of unethical behaviour by magistrates and abuse of judicial power. These disciplinary steps were well publicised in the State. A Code of Conduct for judges was also introduced in 2001, which clearly addressed issues of ethical conduct and acceptable limits of judicial behaviour.

³ The moment a judge is indicted by the NJC and a recommendation of termination of appointment is sent to the Governor, his or her career is effectively ended in the judiciary since he or she remains suspended till the Governor acts on the recommendation. The Governor cannot ignore the recommendation as the judge will still be unable to continue to performing judicial functions.

In addressing delays, reform initiatives included the –

- (i) Introduction of New Rules of Court – emphasising case management, limited adjournments, front loading of evidence and a stringent cost regime.
- (ii) Creation of Specialist Divisions of the Court.
- (iii) Introduction of Electronic recording machines to replace long-hand recording of proceedings.
- (iv) Automation of manual processes from filing of cases to judgment
Introduction of Alternative Dispute Resolution (ADR) options. The establishment of the Lagos Multi-door Court house, a court-annexed ADR option. Citizens Mediation Centres were introduced to enable settlement of disputes especially small claims, free of charge.

Measuring Progress towards the Objectives of the Reform

In measuring the impact of reform on delays we again conducted a desk study on the duration of 100 cases concluded in the High Court in 2001, 2002 and 2003.

Pending cases – which stood at over 30,000, had gone down to 13,802 in 2002 and in 2003 was further reduced to 5,227.

As of 2003, general average time for conclusion of cases was between 12-18 months.

On the issue of judicial corruption , we administered a questionnaire with the same questions as in the 1999 survey, with some specific modifications – questions asking for what changes if any had occurred since 2000. Our sample was again 100 lawyers. An error in the questionnaire led to the sample not being desegregated in the same way as the 1999 survey.

To the question how do you rate the level of public confidence in the judiciary? –

32% said very good, and 45% said it required improvement. Only 5% said poor, and 1% very poor.

On the question of how do you rate the performance of the Lagos State Judiciary, the figures are practically the same as on the public confidence question.

- (a) 4% excellent, (b) very good, (c) 45% requires improvement (d) 2% poor and (e) 0% very poor.

These figures are obviously cheering, when compared with the 1999 survey where 65% of respondents believed that public confidence in the judiciary was very low.

On the question of whether corruption is still considered an issue in Lagos State, 41% said yes, 39% said Minimal and 7% said No.

Compared with survey results in 1999 there appears to be considerable improvement. 80% of lawyers between 11-15 years post - call experience agreed that the prevalence of corruption was high or very high.

On the question whether they thought there had been any improvement from 10 years ago –

(a) 49% said significant improvement (b) 37% said slight improvement, (c) 2% said no improvement (d) 1% said it had gone worse.

An issue in measuring the success of the reform agenda was the public perception of the integrity of the judges of the High Court and Magistrate courts. The test of that was the question, “who did you think is most responsible for corruption in the Lagos State Judiciary. The lawyers’ response showed:

(a) Judges 0% (b) Magistrates 4% - Lawyers 10% (c) Litigants 9% (d) Judicial Support Staff 59% (e) Registrars and Bailiffs 4% (f) Government 0%.

The figures clearly show that judges of the High Court are certainly no longer perceived as being corrupt. Significantly, especially having regard to the clear indictment of the magistracy for judicial corruption in the 1999 survey, the current figures show that only a small percentage of magistrates are regarded as being corrupt. What accounted for such a sharp change in perception? A precise answer is of course difficult, (one of the many weaknesses of perception surveys) was it better remuneration? The shock of seeing 21 of their colleagues terminated and 3 high court judges dismissed? Or a combination?

The figures also revealed, that the problem of judicial corruption was probably more pronounced in the administrative sections of the court system, the judicial support staff comprising, filing and processing clerks etc.

To the question “which section of the judiciary do you consider most susceptible to corruption”? Only 3% of respondents mentioned judges, while 21% mentioned the magistracy. 40% mentioned registry staff and 17% bailiffs.

To the question “since 2001, have you been propositioned to pay a bribe to a judge – 8% said Yes and 92% said No?

In spite of the far reaching reforms in the appointments regime, lawyers still appear dissatisfied. 52% think the process could be better while another 17% say the process is neither fair nor transparent.

Conclusion.

Aside from the inherent drawbacks of the perception index such as the absence of an objective assessment and the inability of the results to show gaps between perception and reality, there are obviously several weaknesses in our rough and ready approach to measuring progress. The inclusion of litigants and other users, in the sample would certainly have given the results greater credibility as a user survey.

Again the results do not sufficiently indicate which of the reform initiatives made the most impact and which were not of much use. Information of this kind would have helped in deciding what to focus on and perhaps what areas required fine-tuning or elimination.

Yet another weakness is that aside from the desk study, the survey is used as the sole means of measurement. This of course reduces reliability of the results. Some other additional measurement might help.

On the whole, indicators have proved useful. First they have helped operators to understand user concerns and priorities. Again, while reform is generally proceeded in a "groping-in the dark" basis, indicators have given logic and direction.

In the perennial fights for resources from government, indicators have helped the case of justice sector operators in being able to demonstrate, especially where improvements and progress are clear, that money had been well spent and the case for more is justified.

The Lagos State justice reform programme began in 1999 at a time when perhaps relatively less attention was being paid to measuring justice sector performance. Today, there is far more work and best practices have continued to emerge from the various efforts from which we can benefit in the years to come.