

**Judicial Reform:  
The Why, the What, and the How**

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For over a decade, the international community has been helping developing nations reform their judiciaries. The World Bank, the Interamerican Development Bank, and the Asian Development Bank have extended over \$800 million in loans for judicial reform. At the same time, the United Nations Development Program, the European Union and its member states, and the American, Australian, Canadian, and Japanese governments have provided significant grant aid to help developing nations improve the operation of the judicial branch of government.

Why are international donors supporting reform? What kinds of projects are included within a reform program? How can a successful reform be achieved? These are the three questions I want to discuss with you today.

**Why Judicial Reform**

Much of the recent emphasis on aid for judicial reform has been spurred by the recognition that a well-performing judiciary is important for economic development. This is the reason my organization, the World Bank, has begun providing loans and extending other kinds of support for judicial reform. We only support judicial reform when it "is relevant to the country's economic development and to the success of the Bank's lending strategy for the country." (To

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\* The views expressed here are those of the author and should not be attributed to the World Bank or any of its directors, officers, or staff. Comments are welcome. By e-mail to [Rmessick@worldbank.org](mailto:Rmessick@worldbank.org), by fax to 202/522-7132.

give you an idea of when this is the case, in my written remarks I have included a brief summary of the Bank's judicial reform projects.)

The recent emphasis by the World Bank and other organizations on the link between a well-functioning judiciary and economic growth is, in one sense, nothing more than a return to first principles. In the 15<sup>th</sup> century, Sir John Fortescue, Henry VI's chancellor, wrote that England's prosperity was traceable to the quality of its legal institutions. Almost 300 years later Adam Smith, the founder of modern economics, concluded that "a tolerable administration of justice" was essential to "carry a state to the highest degree of opulence." At the turn of the 20<sup>th</sup> century the German lawyer and sociologist Max Weber attributed the pronounced differences in development between West European states and China to the rationalized, well-functioning judiciary then common to European countries.

How do judicial systems promote economic growth? In many ways. By enforcing property rights, checking abuses of government power, and otherwise upholding the rule of law. But perhaps their most important function is in enabling exchanges between private parties.

Thomas Hobbes, the 17<sup>th</sup> century English philosopher, was perhaps the first to make this point. Without a reliable judicial system, he argued, traders will be reluctant to enter into wealth-enhancing exchanges for fear that their bargains will not be honored. In his words, when two parties enter into a contract, "he that performeth first has no assurance the other will perform after because the bonds of words are too weak to bridle men's ambitions, avarice, anger, and other passions without the fear of some coercive power."

Leading development economists have rediscovered the wisdom of Hobbes's observation. Douglass North, awarded the 1994 Nobel prize in economics, says that the absence of low-cost means of enforcing contracts is "the most important source of both historical stagnation and

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contemporary underdevelopment in the Third World." Oliver Williamson, another close student of developing economies, notes that a "high-performance economy" is one that is characterized by a significant number of long-term contracts, But these, he says, are just the type of business relationships that are unlikely to thrive in the absence of a well-functioning judicial system.

What happens when the courts are unable to enforce contract obligations? One consequence is that a disproportionately large number of transactions take place in face-to-face exchanges. The simultaneous exchange of money for merchandise means there is less chance for contract breach. Another strategy businesses adopt when the courts are unreliable is to merge with suppliers or customers. This turns what would have been transactions between two separate entities into ones that take place within a single-firm.

But clever as these and other strategies may be for circumventing a poorly functioning court system, they all have one thing in common. As any number of economic studies have shown, all result in higher transaction costs for business. And higher transaction costs retard economic growth.

An example may help. Research from Ghana illustrates one way in which the absence of well-functioning courts drive up costs. Businesses in Ghana rely upon a network of traders to serve as go-betweens. Rather than solicit a supply of lumber, say, from an unknown company directly, a firm will enlist a trader that it knows and that knows the lumber company. The personal relationships provide the buyer and seller with some assurance that the lumber will be delivered and payment received, but at a price: the creation of intermediaries raises the cost of doing business.

Surveys of Latin American firms provide additional evidence of how poorly functioning courts affect business. In Peru almost a third of those responding to a World Bank poll said they

would not switch from a trusted supplier to a new one—even if a lower price were offered—for fear the new supplier could not be held to the bargain. A similar survey in Ecuador found that businesses were hesitant to invest because of uncertainty about enforcement of contract rights.

In-depth interviews of Brazilian entrepreneurs suggest that domestic investment would increase 10 percent if the Brazilian judiciary were on a par with those in the advanced market economies. Recent work in the Philippines and other developing states reach a similar result.

A World Bank survey of 3,600 firms in 69 countries confirmed the importance of courts for business transactions. More than 70 percent of the respondents said that an unpredictable judiciary was a major problem "in their business operations." The report also found that the overall level of confidence in the institutions of the government, including the judicial system, correlated with the level of investment and measures of economic performance.

### **Elements of Judicial Reform Programs**

What types of assistance does the World Bank, the UNDP, and others in the international community provide countries wanting to reform their judiciaries?

Judicial reform is part of a larger effort to make legal systems in developing countries and transition economies more market friendly. This broader legal reform movement encompasses everything from writing, or revising, commercial codes, bankruptcy statutes, and company laws through overhauling regulatory agencies and teaching justice ministry officials how to draft legislation that fosters private investment. Although the line between judicial and legal reform blurs at the margin, the core of a judicial reform program typically consists of measures to improve the operation of the judicial branch of government and related entities such as bar associations and law schools

These measures aim to:

*Strengthen the judicial branch.* Included here are changes in the ways in which judges are selected, evaluated, and disciplined to ensure that decisions are insulated from improper influences. In some cases, the budget for the judicial branch or the authority to administer the funds allocated for the judicial function is transferred from the ministry of justice to the judges themselves.

*Speed the processing of cases.* Providing management training, computers, and other resources to judges and court personnel reduces case backlogs and accelerates the disposition of new disputes. Revising the procedures for filing and resolving lawsuits helps to weed out procedures that invite delay and raise costs.

*Increase access to dispute resolution mechanisms.* The creation of mediation and conciliation services and other alternatives to resolving disputes in the courts reduces court costs, as does introduction of small claims courts or justices of the peace and the establishment of legal aid societies. Actions may also include transferring responsibility for non-contentious matters, such as name changes, the probate of uncontested wills, and the registration of property, to administrative agencies so that the courts have more time for disputed cases.

*Professionalize the bench and bar.* In-service training for judges, lawyers, and other legal professionals on commercial law, intellectual property, and other substantive law areas is included here. So too are programs to establish codes of ethics and disciplinary procedures. Increasing the number of law schools, ensuring that these schools have adequate resources, and modifying the curriculum to reflect the demands of a market economy are also a part of this element.

## **Ingredients of a Successful Reform**

Both developed and developing countries have been working to improve judicial performance for decades, and in some cases centuries. While much can be learned from a review of their efforts, here I would like to focus on three factors common to all successful reform programs: a strong commitment by the leaders of the judiciary, a sound grasp of the incentives judicial actors face, and a clear understanding of how the system is operating. Let me discuss each in turn.

### *Commitment*

To address the long delays in processing both civil and criminal cases, several American states have passed “speedy trial acts.” These laws require the courts to process cases within a certain period of time. But despite the unambiguous terms in which the deadlines were put, these acts have had little effect on case processing time.

There have, to be sure, been a few jurisdictions in which the speedy trial laws have made a difference. And in each, there has been one or more judges committed to reducing delays and willing to spearhead efforts to do so.

By contrast, in court systems where speedy trial acts have failed, they were often enacted over the strong objections of judges, lawyers, and other judicial actors. When the targets of a speedy trial law oppose it, they can always find ways around the law—from liberal invocation of the exceptions permitting waiver of the time limits to creative ways of calculating the time limits that rob them of any impact.

The failure of speedy trial acts illustrates a larger principle about judicial reform, one documented in studies of judicial reform around the globe. No program can succeed without the active participation of those directly involved in administering justice. Courts are governed by a

complex set of formal rules and informal practices. Judges, lawyers, and others who work in the court system know these norms far better than any outsider. They can use this information advantage to defeat reforms with which they disagree. Bringing judicial insiders into the reform process is thus a crucial step in designing a successful judicial reform.

### *Incentives*

A second principle that emerges from a study of judicial reform programs is the importance of understanding the incentives judges, lawyers, and others who work in the courts face. Many judicial reforms are premised on the belief that poor performance is the result of large caseloads thrust on mismanaged, inefficient courts. Thus solutions are sought in such structural reforms as the introduction of automated systems, changes in procedures, and an increase in the number of judges.

While these steps are essential, they are often premised on the assumption that judges, lawyers, court clerks, and other judicial personnel are inert actors. That is, that they will perform whatever tasks they are assigned. But as it has become clear that structural reforms alone are not enough, reformers have begun to reexamine this assumption. Empirical studies show, for example, that delay varies enormously across courts with almost identical structures, caseloads, and personnel levels. These studies demonstrate that poor performance is not an external phenomenon thrust on unwilling participants but a consequence of the behavior of judges, lawyers, litigants, and other participants in the judicial system.

How does one change behavior? The key is changing incentives. If courts are to perform better, ways must be found to reward those who contribute to better performance and sanction those whose actions stand in its way.

A common way to begin is to convene a study group of judges, clerks, lawyers and major users of the courts system to frankly discuss the existing incentives and devise ways to change them. Lawyers, for example, often oppose speeding up case processing, believing their interests are served by drawing out each case and thus maximizing their billings on each. A well-informed study group can sometimes show them where their thinking is wrong. At the least, it can build support among a critical mass of the bar for change.

### *Understanding How the System Operates*

A third factor common to successful judicial reform efforts around the globe is a solid empirical base. It offers answers to such questions as: What kinds of cases are the courts receiving? Who is bringing them? Individuals? Businesses? Government? Who are the defendants? How long are the cases taking to resolve?

Why is such information crucial to designing a successful reform? Without it, designers of a reform program must rely on the perceptions of judges, lawyers, and others close to the courts. But perceptions can deceive. We remember the unusual, not the ordinary. The one in 100 cases that was sensational. Not the 99 others that were run of the mill.

In 1990, American federal judges embraced a reform program based on a perception -- the perception that most civil lawsuits took years to resolve and cost the litigants hundreds of thousands, if not millions, of dollars in legal fee. After spending considerable time and effort implementing the program, the program was evaluated. The evaluation concluded that the reform had had little impact.

Why? The evaluation revealed that the typical civil lawsuit in an American federal court did not takes years and cost millions. Rather, the typical suit was disposed of in nine months at a cost that was surprisingly low. The reforms had aimed at the atypical case, like the one brought

against Microsoft. Such cases can indeed take years and cost millions to resolve. But even in the American federal system, such cases are exceedingly rare. Hence, reforms that target them will almost certainly have little effect on the performance of the system as a whole.

A second example. Many court reforms in Latin America have rested on the belief that delays in the processing of cases are enormous and are the result of judges' crushing workloads. But research conducted by the World Bank in partnership with the courts of Mexico and Argentina showed that neither belief was correct. Is it any wonder that reforms premised on these erroneous beliefs have had little impact?

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In closing, let me stress two points that emerge from the experience with judicial reform around the globe. One, reforming the judiciary is indeed a challenging undertaking, but one well within the reach of any country where the leadership of the judiciary is committed to reform. Two, the payoffs from a successful reform, in terms of economic growth and development, more than justify the work involved.

Thank you for your time and attention.

Attachment: Brief Summary of World Bank judicial reform activities

## **Summary of World Bank Judicial Reform Activities March 2002**

### *Lending*

Judicial reform has figured in Bank lending for more than a decade. Loans have been extended to train judges, modernize court and case management systems, refurbish courthouses, and enhance access to justice. The writing of judicial ethics codes, the introduction of more transparent procedures, and other policy reform have also been supported, either through direct lending or as a condition for the extension of a loan.

Free-standing judicial reform projects, those whose sole or main purpose is to help the judiciary modernize, are probably the most visible part of the Bank's judicial reform activities. The first project was a 1993 loan to Venezuela for \$30 million. Since then, the Bank has approved 19 more projects. Total lending now stands at \$204.5 million. The projects together with the loan amount, date of approval, and a brief description of the components appear in Attachment one.

Free-standing projects are not the only lending that addresses judicial reform. Reforms to the judiciary and such related legal institutions as regulatory agencies and supreme audit institutions are often components in adjustment loans or finance and private sector loans. As part of its Portfolio Review, the Public Sector Group examined every loan from fiscal year 1997 through 2001. In all, 356 contained one or more components that addressed legal institution reform. For fiscal year 2001 the number of projects with one or more legal institution components was 84.

### *Knowledge Dissemination*

The World Bank is also stressing the dissemination of knowledge about judicial reform and related topics to judges, lawyers, and policymakers in client countries as well as to staff in partner organizations. A primary tool has been the Web sites. The one maintained by the Legal Institutions Thematic Group alone now receives over 1,000 visits a day, and the former head of the Development Assistance Committee of the OECD recently called it the single best source of information for those working on law and justice reform.

The Bank is taking a leadership role in research on judicial reform. The 2002 *World Development Report* commissioned the most comprehensive cross-national study of judicial efficiency every conducted. Harvard University Press will publish it in its entirety later this year. The Bank has also sponsored first ever studies of the caseloads of the civil courts in Argentina, Mexico, and the Dominican Republic.

The Bank has hosted over 50 sessions with outside experts on judicial and legal reform and organized a number of training seminars for its staff as well as personnel from NGOs and other donor organizations. This includes the two international conferences, one held in Washington, D.C., in June 2000, and a second in St. Petersburg in July 2001. A distance learning course on judicial reform was broadcast to five Asian nations last year, and a similar course for Latin American will begin shortly.

**Free-Standing World Bank Judicial Reform Projects  
March 2002**

Country	Loan Amount (millions)	Date Approved	Project Name and Description
Albania	\$9.0	3/00	<i>Legal and Judicial Reform Project.</i> The project aims to provide required resources for technical assistance, training, goods, and works that are needed to implement important aspects of the government's institutional agenda for legal and justice system reforms,. The four components are. 1) improving legal education at the Faculty of Law of the University of Tirana by funding twinning arrangements; 2) improving court and case management systems, providing judicial training, strengthening the enforcement of judicial decisions, and reinforcing inspection services in the justice system; 3) establishing a center for mediation and arbitration of commercial disputes; and 4) designing and implementing an efficient system to disseminate all legal information gathered at, and published by the Publication Center.
Argentina	\$5.0	4/98	<i>Model Court Development.</i> The project will develop a model court program in at least 12, and possibly as many as 17, first instance courts. Different means of dealing with such systemic problems as the fusion of judicial and administrative responsibilities will be addressed, and the resulting improvements in efficiency, public and judicial support for reform, and public confidence will be monitored.
Armenia	\$11.4	9/00	<i>Judicial Reform.</i> The objective of the project is to assist the Government in establishing an effective, efficient, and independent judiciary. This is to be realized through: 1) improving court administration, 2) rehabilitating court infrastructure; 3) training judges and court personnel; 4) supporting the Ministry of Justice in enforcing court decisions; and 5) improving access to legal information for judges, government officials, legal professionals and the public.
Bangladesh	\$30.6	3/01	<i>Legal and Judicial Capacity Building Project.</i> The project's four components are (1) introduction of a case management system, (2) improvements in the incentives judges face, (3) reform of court administration, and (4) enhancements in access to justice.
Bolivia	\$11	4/95	<i>Judicial Reform Project.</i> This Project aims at: (a) improving the quality and effectiveness of the Borrower's administration of justice and establishing the right policy framework; (b) strengthening the Judiciary's institutional capacity to provide judicial services; and (c) strengthening the Ministry of Justice's capacity to prepare and review, and implement laws and programs related to the Borrower's constitutional, judicial, economic and social reforms..

Croatia	\$5.0	6/01	<i>Court and Bankruptcy Administration Project.</i> The project will assist in advancing orderly insolvency proceedings while modernizing selected commercial courts and increasing professionalism and competence of judges, other staff of the commercial courts and bankruptcy trustees. It is a pilot for a broader judicial reform project. The long term objective to be achieved, on the basis of experience gained through the proposed project, is the establishment of a legal and institutional framework which can effectively protect private property, enforce contracts, defend economic rights against infringement, and establish a secure environment for private investment.
Colombia	\$5.0	11/01	<i>Judicial Conflict Resolution Improvement Project.</i> This Learning and Innovation Loan will test a participatory and comprehensive approach to organizational change in the judiciary. The components provide for training on change management, support for organizational changes, and computerization.
Ecuador	\$10.7	9/96	<i>Judicial Reform Project.</i> The project aims to increase efficiency, effectiveness and transparency in the judicial process by improving case administration procedures and infrastructure; expanding the use of ADR mechanisms within the court system; improving the access to justice by the public and women in particular; court reform; and research and legal education.
Georgia	\$13.4	6/99	<i>Judicial Reform.</i> The objective of the project is to assist in the development of an independent and professional judiciary committed to a high standard of judicial ethics and capable of providing an efficient dispute resolution function. The components are: 1) court administration and case management; 2) infrastructure rehabilitation; 3) enforcement of court judgments; 4) assistance to the Ministry of Justice; 5) support for a Judicial Training Center and 6) public information and education.
Guatemala	\$33.0	10/98	<i>Judicial Reform.</i> The project will address institutional effectiveness and access problems of the judiciary system by 1) strengthening institutional capacity of the judiciary, 2) providing anti-corruption support, 3) strengthening access to justice and 4) providing support for the Judiciary Branch Modernization Commission.
Kazakhstan	\$16.5	5/99	<i>Legal Reform Project.</i> The project components are: 1) legal drafting and institutional strengthening, including legal drafting, technical assistance to the Ministry of Justice, and training of government lawyers to improve their drafting skills; 2) judicial strengthening, including support of the judicial training institute and improvement of court administration and case management; 3) legal information and public awareness, including support for an electronic system of legal information and support of public awareness programs and campaigns; and 4) project management and implementation.
Mongolia	\$5.5	12/01	<i>Legal and Judicial Reform Project.</i> The four components are. 1) support administrative court system to promote transparency and governance. 2) capacity building for a unified system of legal and judicial information; 3) improvement of legal education and legal profession, and 4) strengthening the Project Implementation Unit..
Morocco	\$7.0	6/00	<i>Legal and Judicial Development.</i> The project will support (a) strengthening of the judicial system's

			capacity to handle business-related cases through the introduction of modern court management techniques and case management tools and systems in specialized commercial tribunals and Registries of Commerce; (b) strengthening the Ministry of Justice's capacity to manage and disseminate legal, judicial and regulatory information and promote a wide-ranging communication policy, including a public awareness program; (c) modernization of the training of judges through the reorganization of the National Institute for Judicial Studies; and (d) a legal and regulatory component that includes drafting of an arbitration code and review and amendment of relevant laws
Peru	\$22.5	12/97 [canceled 9/98]	<i>Judicial Reform Project.</i> The project will focus on: 1) the administration of justice (through modernization of the administrative apparatus of the judiciary and court performance improvement pilots in selected districts); 2) judicial selection, evaluation and training (through strengthening the norms and system for selection and discipline and training programs to upgrade judicial skills and aptitudes); and 3) access to justice (through strengthening Justice of the Peace authorities, the creation of an Access Fund to finance projects which will promote ADR and strengthening the capacity of civil society to monitor judicial performance and support for the Office of Defensor del Pueblo.
Russian Federation	\$58.0	6/96	<i>Legal Reform Project.</i> The project will focus on 1) assistance for the legal drafting of economic laws at the federal level and on a pilot basis in the Sverdlovsk and Orel oblasts; 2) development of legal information guidelines and pilot implementation of electronic systems; 3) improvements in legal education and a public education campaign to raise awareness of the role of law in a market economy; and 4) judicial training and a study to analyze the structure and administration of courts, including selection and appointment of judges and court personnel, the creation of judicial districts and budgets and the management of courts.
Sri Lanka	\$18.2	6/00	<i>Legal and Judicial Reform Project.</i> The project aims to 1) improve the legal framework, legal education and access to legal information in the area of commercial law; 2) enhance the capacity of the Registry of Companies; 3) improve the efficiency and quality of judicial services and training.
Venezuela	\$30.0	12/93	<i>Judicial Infrastructure Project.</i> The project seeks to improve Venezuela's enabling environment for private sector development and reduce both the private and social costs of justice by: 1) improving the efficiency in the allocation of resources within the judiciary; 2) increasing courtroom productivity and efficiency; and 3) reducing the private sector costs of dispute resolution. To achieve these objectives the project supports the institutional development of the courts and of the Judicial Council.
Venezuela	\$4.7	12/97	<i>Supreme Court Modernization.</i> The project will support 1) modernization of the administrative and case management system and 2) development of a legal database and dissemination program.
Yemen	\$2.5	6/99	<i>Legal and Judicial Development.</i> The judicial reform component will train judges, faculty of the Supreme Court Institute, and arbitrators and mediators; improve training curriculum for judges; assess court administration and the execution of judgements; disseminate judgments within the judiciary. The

			public awareness component will finance a baseline study for an awareness campaign on the rule of law and the role of the judiciary in society.
West Bank and Gaza	\$5.5 (trust fund credit)	6/97	<i>Legal Development Project.</i> The project will support the Palestinian Authority's efforts to: 1) unify and develop the existing legal framework to help provide a hospitable environment for market-oriented activities; 2) improve the judiciary's administrative and case management procedures and reduce case backlog; 3) introduce selected training programs for judges; 4) expand the use of ADR mechanisms within the judiciary; and 5) disseminate legislation and court precedents to the legal, judicial, academic and business communities, and the public at large.