Judicial Reform and Information Technology

Dory Reiling

Dory Reiling, Judicial Reform and IT support
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There is a general feeling that information technology will help solve the problems judiciaries around the world face. A problem with using information technology to support judicial reform is that there is almost no organised expertise regarding judicial reform and information technology. Technology and the work of judicial organizations are worlds apart. Consultancy tends to be very technocratic in the sense that it treats its subject from a technical process improvement perspective, or from the perspective of technology. Academic literature on the other hand usually lacks practical knowledge of how courts work in actual practice. Third problem is that there is by now a whole body of practical experience with information technology in court work, but that this experience is not easily accessible because it is so dispersed.

Bringing inside knowledge about the judicial processes, judicial reform worldwide and information technology together is the purpose of my PhD thesis. This paper is a summary, updated in January 2009 after completion of the thesis. The research question addressed in both paper and thesis is: **How can IT help to address the big issues judiciaries face?** The research was funded by the Netherlands Council for the Judiciary.

INTRODUCTION

The topics are approached from the issues of *case delay, access to justice and corruption.* These are the three most frequent user complaints; they form the keystones of the norms in the international conventions on courts access. In more general terms, they are problems each organization has to contend with: internal processes, client interaction and organizational integrity. For each topic, I explore what we know about it, what has been tried and tested to deal with it, what the information aspects of it are and which way that points for using forms of information technology.

The study is interdisciplinary in nature. It draws on sources from socio-legal studies, political and organization sciences and information science as well as empirical information from more generally available sources such as statistics and opinion polls. In its approach, it is partly a socio-legal study, partly a study in organization science, partly a study in information science.

Conceptual framework: Standards And Definitions

This section introduces relevant definitions, the standards of the International Conventions and other relevant components of the normative framework for courts, judiciaries and judicial reform.

With regard to definitions, clarity of concepts is very necessary. Terminology differs from legal system to legal system and from culture to culture. The term "court" is used here primarily as *the organization encompassing individual judges, panels and juries, their legal staff and their logistical support staff.* The courts' primary business process is processing filed cases. It involves everything a court does to process cases through the court system, from the filing of a case to archiving decisions and ensuring their enforcement. The term "judiciary" is used to mean *the judicial branch of government, including the national organization of all the courts.* Interdisciplinary research also raises the need for conceptual clarity since concepts are used differently across disciplines.

The normative framework

The Universal Declaration of Human Rights of 1948[1] states that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. Article 14 of the International Covenant on Civil and Political Rights (ICCPR), by stating that everyone is entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law, affirms this statement, as do the regional human rights conventions. All these conventions award citizens the right to impartial judges and courts. **(Please refer to Figure 1 below).**

The United Nations Convention against Corruption (UNCAC)[2] aims to promote and strengthen measures to prevent and combat corruption and promote international cooperation and technical assistance in the prevention of and fight against corruption, and promote integrity, accountability and proper management of public affairs and public property. The Organization for Economic Cooperation and Development has also produced an anti-bribery convention aiming to prevent international bribery and

corruption. In order to support implementation of the international anti-corruption agreements, the United Nations Office of Drugs and Crime has a Global Programme against Corruption (GPAC) that builds capacity by providing a knowledge base and conducting training and education. Because a corrupt judiciary is a serious impediment to the success of any anti-corruption strategy, the GPAC also examines judicial corruption and supports **a Judicial Integrity Group** (JIG). The JIG, consisting of chief justices from Africa and Asia, has produced a model action plan for judicial reform, a methodology for the assessment of justice sector integrity and capacity and the Bangalore Principles of Judicial Conduct[3]. The Bangalore Principles, drawing on judicial codes of conduct found around the world, list six principles of judicial conduct: independence, impartiality, integrity, propriety, equality, and competence and diligence. I mainly discuss impartiality (Principle 2) because it addresses the topic of integrity and impartiality most directly. Impartiality, with regard to the decision itself but also to the process by which the decision is made, means performing judicial duties without favor, bias or prejudice (Principle 2). Impartiality requires the existence of actual impartiality as well as the appearance of impartiality as seen through the eyes of the reasonable observer. The Principles distinguish impartiality and integrity from independence. Independence can be regarded as the institutional safeguard of impartiality. Hence, it is not a value in itself but a condition. Since the vast majority of countries are party to one or more of the conventions mentioned above, the normative framework as described binds the judiciaries and courts in those countries directly or indirectly.

Indicators and Databases

This section introduces the concept of indicators as well as the main sources I use for quantitative comparisons between countries and their systems: what data do they collect, how do they collect it, what can they tell us, what are the drawbacks for each of them[4].

Various organizations use different definitions of indicators depending on their activities and purposes.

An indicator is something that can be seen, experienced, or recorded. It is a sign that something exists, or has happened, or has changed. An indicator can also be a unit to measure change or progress. My sources each have their own definition of indicators. Below is a list of my main sources for quantitive comparisons between countries and their systems:

- The Transparency International (TI) Corruption Perception Index (CPI) is the most influential corruption perception survey in the world. It ranks countries in terms of the degree to which corruption is perceived to exist among public officials and politicians. It is a composite index, making use of surveys of business people and assessments by country analysts. The Index is now in its 12th year. The 2006 index ranks 163 countries. It draws on 12 different polls and surveys from nine independent institutions, using data compiled between 2005 and 2006. It gives each country a score, an absolute figure between 0 and 10, where 10 is the maximum score. Moreover, it produces a ranking, a list in which countries are arranged according to their score (TI CPI).

- The most comprehensive database on public governance is the Worldwide Governance Indicators database developed by the World Bank Institute. The WGI is published annually. It aggregates data from numerous other sources. The data are grouped into six categories, all expressing an important aspect of a country's political system: voice and accountability, political stability and absence of violence, government effectiveness, regulatory quality, rule of law, control of corruption. The category that is most relevant for studying the judges and the courts is the Rule of Law indicator. It aggregates data on contract enforcement, quality of police and courts and incidence of crime and violence from 24 sources (World Bank 2007).

- The Doing Business (DB) database is a product of the staff of the World Bank's International Finance Corporation. It gathers data about the business climate in an annually increasing number of countries around the world, from informants who report each year, on a number of topics. The topic most relevant for studying the courts is that of Enforcing Contracts. It lists the number of steps needed, the time involved, and the cost, of enforcing a contract (World Bank and International Finance Corporation 2007).

- The Human Development Index (HDI) is a summary composite index that measures

a country's average achievements in three basic aspects of human development: health, knowledge, and a decent standard of living. Health is measured by life expectancy at birth, knowledge is measured by a combination of the adult literacy rate and the combined primary, secondary and tertiary gross enrollment ration, and standard of living by GDP per capita.

- The European Commission for the Efficiency of Justice (CEPEJ) collects data on the performance of justice institutions in member states of the Council of Europe, aiming to improve the functioning of justice systems in those member states.

These indexes are used for quantitative comparisons of different countries and systems.

Empirical material

This introduces my own empirical material. As senior judicial reform expert for the World Bank, I have done project advice, studies and assessments for the World Bank on judicial systems in Benin, Gambia, Nepal, Sri Lanka, Georgia, Romania, and Macedonia. This section describes my briefs, the work I did, my reports and their conclusions, and the most important and relevant information about the country in question for this study.

Here is a table of those countries with their scores and indicators in the instruments just described. **(Please refer to Figure 2 below).**

Benin

Benin is a former French colony in West Africa. It borders on Nigeria to the East and Togo to the West. Economically, Benin is enjoying steady growth.

During the month of September 2004 I was in Benin as background support for the World Bank country lawyer who was negotiating the Poverty Reduction Strategy Credit for the next year. The Credit is a budget support loan that is based on a program agreed between the government and the World Bank. The justice sector had been added to the program as a new sector that year, and its programming required more than routine attention, as the basis for a multi-year reform program for the sector. We wrote the relevant sections in the program and in the program budget.

Gambia

Gambia is a very small country situated along the Gambia River that runs through Senegal in West Africa. I visited Gambia in March 2005. Justice system reform was part of the World Bank Economic Management improvement program there. The chief justice of Gambia applied for funding for a court-annex mediation program. My brief was to advise the World Bank country economist for Gambia who is in charge of that program.

Georgia

Georgia is a former Soviet republic in the Caucasus. After the Rose revolution in 2003, it has a strong reform agenda under the leadership of its president, Mikhail Saakasvili. It is strongly oriented towards the European Union, but US NGO's like the American Bar Association are very active there in promoting their version of the rule of law.

In May 2004 I visited Georgia at the invitation of a colleague at the World Bank in charge of a justice reform project financed by a grant of some few hundred thousand dollars. My brief was to interview a number of key players in the project and visit a couple of courts and report whether I thought the project should change direction.

The highest priority for nearly everyone I spoke to was to combat corruption in the judiciary, with improving court management coming in a close second.

Macedonia

Macedonia is a relatively small country between Greece and the Balkans. It was formerly a part of the Yugoslav Republic.

In January 2005 I visited Macedonia as part of a World Bank team working on an assessment of the justice sector. My brief was to observe judges handling commercial cases in two courts: Skopje I and Shtip. The judges felt they were doing too many basically administrative things, and my job was to find out what it was they were doing and report.

Nepal

Nepal is situated in the Himalaya mountain range between India and China. Since a fatal incident in the royal family in 2001, the monarchy has been on a downward turn. It was abolished in June 2008. The formerly Maoist "rebels" are now in a coalition

government. Economically, Nepal depends heavily on India. In June 2004 I spent a month in Nepal as part of World Bank team investigating the legal framework for the financial sector. My brief was to study those parts of the courts that serve the financial sector. I interviewed judges and court management as well as arbiters in special tribunals, other

donors. The team's report was published as *Nepal, the legal and judicial environment for financial sector development, A Review.*

Romania

Romania is a former member of the Soviet Union's satellite bloc in Eastern Europe. It joined the European Union on May 1st, 2004.

I visited Romania on two occasions, in 2005. My brief was to support the World Bank regional lawyer who was preparing a World Bank project for judicial reform. When the project finally focused largely on reconstructing court buildings and a training program, my help was no longer needed.

Sri Lanka

Sri Lanka is an island off the eastern coast of India. It was colonized by the Portuguese in the 15th century, and then by the Dutch and the British respectively. Since the mid-1950s, there have been difficulties between the Sinhala and Tamil parts of the population, with unrest and violence flaring up time and again.

I visited Sri Lanka three times: in 2004, 2005 and 2006. In the framework of supervision missions of the ongoing World Bank justice reform project, my brief was to start discussions on the content of a follow-up project. I visited a large number of courts and spoke with some influential members of the program steering committee. My observation was that their priority lay with building and rebuilding courthouses and other building projects.

Information Technology

In an early example of the use of information technology in the courtroom, the Nuremberg war crimes tribunals after World War II made use of film material and simultaneous translation. In 1961, the court trying WWII war criminal Adolf Eichmann used simultaneous interpretation, photocopies and super8-films. Today, a host of different kinds of IT are used, for example in the International Criminal Tribunal for the Former Yugoslavia (ICTY): video and audio recording of the court sessions, simultaneous interpretation, electronic court reporting, videoconferencing for witness hearings, and electronic files. Moreover, the ICTY maintains a web site with its decisions, background information, and sounds and images from the courtroom.

IT changes the judiciary:

The introduction of forms of information technology is changing judiciaries. We see organizations changing almost autonomously under the influence of technology: new forms of governance, new ways of handling information. They also improve their services, i.e. they find ways to do better what was already done. Finally, I look for innovations, doing things that were not done before. So far, there has not been much serious innovation in ordinary courts.

THE BIG THREE: THE MAJOR PROBLEMS ALL JUDICIARIES ENCOUNTER

This is the heart of the study. It explores how information technology can help support reform to improve the performance of courts and judiciaries, focusing on three common problems.

According to court users, the three most pressing problems about courts and justice systems are:

- case delay or backlog,
- lack of access and (related) lack of legal information and knowledge.
- corruption,

Each of these problems can also be regarded as a deficit or lack in compliance with the standards the international conventions accord to citizens:

- timely decisions,
- access to court,
- impartial decisions.

Every organization needs to address the same issues: interaction with the clients, internal processes and the integrity of the organization.

The following sections outline, each in turn, the problems encountered, explain how to diagnose them, redefine them in terms of information, and indicate ways in which IT can address them.

Case delay

This section discusses aspects of case delay, backlog and other matters having to do with case processing. It examines what is required to make IT effective for reducing case delay and improve dispute resolution:

- How to diagnose delay and/or backlog
- How courts handle case information
- Using IT better by developing routines and standards
- Using IT to manage demand and case flow.

Below are some of the most interesting conclusions.

Conclusions about delay

Parties to a court case have a right to a decision in their case within a reasonable time. Case delay, case disposition that exceeds reasonable

time, is considered a serious problem. Delay harms parties, society in a larger sense and the administration of justice itself. In order to establish whether there is delay, case processing time needs to be measured and compared to relevant standards. Measuring case processing time can be done in different ways, depending on the availability of statistics. Measurements need to be as specific as statistics will allow, in order to provide understanding of where the problems may be. This is because some parties to a court case need a decision more urgently than others. Some examples: juveniles need a disposition more urgently than commercial parties. Victims who have suffered physical harm have a more pressing need for compensation than parties to a money claim. Many judiciaries deal with this by having special case streams, for example for juvenile cases and summary proceedings for provisional decisions in urgent matters.

Standards help to determine whether delay is a problem that needs to be tackled. They also help in reducing delay by providing a target. Self-imposed standards do not conflict with the constitutional independence of the judiciary. This is still true if the standards were adopted under external pressure because the obligation to provide timely justice is an obligation laid down in the Conventions. Jurisprudence on compliance with those standards, like that of the European Court of Human Rights, is a source of standards as well. Standards like the ones from ABA can emerge from study of actual practice, either in one country or by cross country comparison like in Doing Business. According to the DB estimates regarding ordinary civil contract enforcement cases, courts in 58 out of 178 countries dispose those cases within the ABA standard, and courts in130 out of 178 countries stay within the ECHR standard for case delay in ordinary civil cases. Such a result provides a basis for discussion as to what a reasonable delay actually is.

Outcomes of the research on causes of delay are very diffuse. They do not provide hard and fast guidelines for reducing backlog or delay. Procedural complexity emerges from the research as a prominent cause of delay. Specialization is reported as an effective remedy. It comes in many forms: summary proceedings, small claims courts with simpler procedures. Early intervention is reported as effective. Differences in case and court management, balancing resources with demand for dispositions, are sometimes identified as a factor in length of proceedings.

What about the role of IT? On the whole, IT is not mentioned frequently in the material found. If it is mentioned at all, it is usually in a very generic way: using IT will reduce handling time. Whereas we see frequent references to IT in programs to reduce handling times, not a lot of it is left if we look at some sources of experience. Apparently, implementation of IT has not been very successful at reducing case processing times. Various explanations for this observation are possible. Maybe this has not been studied, or maybe the results of studies that were done were inconclusive or negative. Or maybe implementation of IT in courts has not yet led to changes in work processes that lead to more expedient processing times. Most courts are still paper based, and their interaction with parties has, so far, not changed fundamentally.

This study will take a different approach. It looks at court processes themselves in terms of information handling. We need to know more about the processes in order to gain a deeper understanding of what IT can do.

From the above, we can draw some lines as to which interventions may benefit from using IT. We will look at the interventions in terms of information. The directions to explore for forms of IT are increased transparency and simplification of procedures. Writing about IT always entails the risk of becoming speculative. To avoid this risk, a concrete, practical example that can be tested is necessary. Therefore, civil justice in the Netherlands will be the object of study in the next section.

Case processing as in information process: a case study of the Netherlands

«The best law» according to Voltaire

Voltaire, in a letter of 1745, recalled a judicial practice in the Netherlands, of magistrates called « peace makers » *: The best law, the most excellent custom, the most useful I have seen, is in Holland. When two men want to plead one against the other, they are obliged to first go to the tribunal of the judge conciliators, called peace makers. If the parties come with a lawyer or an attorney, the latter are made to leave, like one draws the wood from a fire one wants to extinguish. The peace makers say to the parties: you are great fools to want to eat your money by making each other mutually unhappy. We are going to help you*

and it will not cost you anything. If the rage of chicanery is too strong in the pleaders, they are deferred to another day so time can soften the symptoms of their illness. Then the judges refer them a second and a third time. If their folly is incurable, they are allowed to plead, just as limbs with gangrene are left for amputation by surgeons; thus, justice takes its course.[5]

The main topic in this chapter is the different groups of cases that flow through the court from a perspective of information processing. Using statistics from the Dutch first instance courts, the cases can be sorted according to the level of predictability of the outcome and the party configuration of zero sum and win-win outcomes. **(Please refer to Figure 3 below).**

That leads to the following conclusions:

- Courts fulfill four major roles. In the majority of the cases processed in the Dutch civil jurisdiction in the first instance there is no dispute resolution because there are few disputes to be found there. Titles are provided for undefended claims (role1), arrangements in family situations are marginally tested (role 2), settlements are encouraged wherever possible (role 3). In those cases where there is no dispute, the information available at the outset is sufficient to finalize the case and produce a decision. The roles of legal protection and of rights enforcement also manifest themselves in title provision and the notarial role.
- Fewer than 20% of the cases need additional information during the court procedure in order to bring a resolution closer. Half of those cases are most probably resolved with a settlement.
- What is left after that is a small fraction of the total case load in which disputes are decided by a judicial decision (role 4). The role of dispute resolution, most often mentioned by the different stakeholders, is not the most prevalent one if we look at its share in the total case load.
- Of all cases that can be considered genuine disputes, probably half are resolved by a form of settlement, either in or outside the court.
- These conclusions can be drawn because the statistics to do so are available from the case administration systems.

We can put these findings into the context of some common approaches to civil justice reform in the recent past. A dispute can best be resolved where that can be done at the lowest possible social expense. This principle guided a recent study of a fundamental revision of Dutch procedural law The approach developed in Zuckerman's study on Civil Justice in Crisis in 1999 can be regarded as an operationalization of this principle. In this approach, the three aspects of time, cost and truth are central. Zuckerman observed in 1999 that a reassessment of the balance between those three was going on in many parts of the Western world, with the emergence of the ideas of proportionality and a just distribution of procedural resources (Zuckerman p. 48). By 2008, we should be able to see those trends in action. Whether, and how, courts and judicial systems have started to use forms of information technology for the purpose of rebalancing time, cost and truth should also be discernible by now.

Simplification and early intervention tend to reduce case processing and/or disposition times. Both are related to proportionality in case processing as well. Examining court practices may provide some insight into how simplification and early intervention can work to reduce time and cost, and how they can be achieved using forms of information technology. In this model, that could mean a development along the following lines:

Simplification may well reduce processing and/or disposition time and thereby cost. We can examine how cases can be moved to the left in the matrix in ways that involve procedural and substantive simplification.

Early intervention, too, may reduce processing and/ or disposition time and thereby cost, either by keeping disputes out of court altogether and by encouraging settlement. Keeping cases out of court involves moving them to the left and down in the matrix.

And if, like the Dutch peacemakers in Voltaire's letter we think time and cost should be saved by keeping disputes away from legal resolution, and helping parties to settle their differences is a socially desirable objective, it is useful to find out how cases can be moved in the direction of the bottom half of the matrix.

In the final part of the discussion on case delay, I examine some examples of standardization in Dutch court practice that are reputed to have had dramatic

effects in moving large numbers of cases from group 4 to group 2.

Access to Justice, Access to Information

This section discusses impediments with regard to information and knowledge which create barriers to access to justice. It looks at empirical research on information and knowledge needs expressed by people with justiciable problems. It also looks at how courts can improve access to justice using forms of information technology, and particularly the Internet.

Access to legal information is an important barrier to be explored. Firstly, because access to information will compensate for the disadvantage one-shotters (parties who come to court only very occasionally) experience in litigation, thereby increasing their chance of a fair decision. Secondly, because the Internet provides a channel for legal information service, but experience with it is limited in most judiciaries.

The information needs that arise when people experience justiciable problems turn out to be problem-specific[6]. Most problems are resolved by people themselves, sometimes with the help of information, or help in the form of advice or assistance. The help is provided by many different organizations, but mostly by specialized organizations or providers of legal aid and alternative dispute resolution.

The implications of those findings for the role of courts in improving access to justice using information on the internet and digital access to courts have two important aspects. One is information service to keep disputes out of court, and the other is information on taking disputes to court.

Judiciaries and courts, in their general shadow-of-the-law role, can help keep disputes out of court by providing information about general approaches judges and courts have to specific types of problems. Settling these disputes is generally done with the support of legal or specialist organizations. Information about those general approaches will need to become publicly available. Increasingly, judicial decision making is supported by policies and decision support systems reflecting policies. Policies and decision support systems, if available publicly, can help keep disputes out of court.

Access to information increases litigants' chances of a just, fair decision (chapter 3.1). Information service on the Internet can support courts' role of ensuring fair process. For taking their case to court, litigants need information on how to resolve problems, on rights and duties, and on taking a case to court. Transparency on processes will reduce opportunities for corruption.

Judiciaries can actively contribute to improved access to justice in this field by providing accurate information. They can publish decisions, information about their processes and information people need for coming to court and preparing a case. Judiciaries have a monopoly. Controlling corruption involves balancing the monopoly with accountability. Publishing decisions and information about processes an important tool against corruption in courts and judiciaries. This transparency will support impartial processing and decision making.

Impartiality, Integrity and Corruption

This section examines corruption, in general and more particularly in the judiciary and the courts. It aims to find out how corruption in the courts can be reduced and how and under which conditions IT can realistically be expected to contribute to reducing corruption in the judiciary and the courts. In order to do that, the following areas are covered:

- Theoretical framework
  - definitions of corruption from different perspectives
  - the normative, legal framework
  - Some relevant theories about causes of corruption
  - A comparative, cross-country approach
- Empirical evidence of corruption in courts and judiciaries:
  - Indicators, variables and data
  - Empirical evidence on the incidence of corruption in the judiciary and the courts
  - Some case studies: Slovakia, Bulgaria, Georgia, Nigeria
- Possible remedies: corruption in courts and judiciaries as an information problem
- IT support for the possible remedies

The IT remedies will be discussed more fully in part 3, on introducing and implementing IT and the requirements that sets for the judiciaries and the courts.

The case of Georgia

During one of my court visits in Georgia in 2004, case handling was explained to me. In the

smaller courts, case handling works as follows, or at least it did at the time of my visit: A case is filed, that means someone brings one or more documents to the court building. The file is taken in by the clerk. The clerk gives the file a case jacket. The file in its jacket is then passed on to the judge, who keeps it in his or her cabinet throughout the life of the case. The judge then needs to determine the court fee. This is done by estimating the work the court will have with this case, judging from the nature of the dispute and the content of the file. There is no established fee structure. No one but the judge handles the case file. The judge writes a notice to the filing party asking for the estimated court fee.

General Theory

Corruption in the context of judiciaries and courts means behavior by judges or court staff that is improper because, for private gain, it deviates from the rules of conduct derived from the provisions in the international conventions concerning judicial impartiality. Weak institutional development facilitates corruption in courts and judiciaries. Depending on the context, arrangements that support institutional independence, for example internal disciplinary mechanisms that lower risk of detection or sanction, may actually increase corruption. Low pay and lack of resources can raise the benefits of corruption. Where judges have

- a monopoly on decision, therefore no competition, and
- wide discretion, for instance when there is no or limited possibility of review or appeal, and
- low accountability, because there is no public scrutiny or the risk of detection or sanction of corrupt behavior is low, corruption is likely.

A low detection risk points to institutional weakness. The level and form of institutional weakness are important determinants for corruption. The actual level and form the corruption takes in a given situation are related to the level of development. Both level and form of institutional weakness indicate where starting points for reform are. This framework provides some focus for the evidence of the incidence of corruption, in general and in judiciaries and courts, in the next section. It will help gain some understanding of the starting points for reform to reduce corruption in courts and judiciaries in countries in different syndromes.

Bribery

Procedural complexity and long duration create opportunities for bribery. The extreme weakness of the institution means there is little risk of detection. In Georgia, candidate causes offered by stakeholders in the judiciary included lack of training and education, deficient court management and very small courts. The Georgia case handling story shows there was no case administration to speak of in this example: no administration, no clear, unambiguous procedure for setting courts fees. The judge in the case had the monopoly as the only case handler, wide discretion with regard to the court fee, and a very low risk of detection of a possible unfair decision.

Institutional weakness, consisting of a lack of systemic administrative support for supervision of the judicial branch is described vividly in the World Bank's Bulgaria justice sector assessment. In Slovakia, the most significant factors are the quality of internal administration, information flow, and the existence of meritocracy. Such deficiencies, occurring with more or less severity depending on the level of development of the country in question, present as many opportunities for unchecked administrative corruption.

Here is a starting point to think about information as a remedy against corruption. Unfair decisions and procedures will be harder to carry out when:

- Information flows within the organization are clear
- Internal administration is done well on the basis of clear, unambiguous predefined procedures
- Careers are managed on the basis of competence and merit.

Clear procedures will limit the scope of discretion. All improvements to information flow will raise the risk of detection as well as accountability.

Corruption as a problem of information

It is essential to distinguish identifying the problem of corruption in the judiciary from identifying its source or its solutions or remedies. This is particularly true because we are looking for remedies that can be supported with information technology. For each country or system, a thorough diagnosis is needed to gain insights into the proximate and underlying causes.

Institutional weakness

The illustrations and the research discussed above strongly suggest the underlying cause of corruption is mainly institutional weakness, including absence of clear information flows, poor internal administration, poor career management causing political intervention in appointments and promotions, and a variety of informal rules, incentives and cultural expectations. Thus, there is always a risk of corruption in judiciaries and courts. Its level and the form it takes are influenced by the level of institutional weakness, which strongly correlates with the level of development of the country in question. The institutional weakness can consist of poor accountability and it leads to low risk of detection as well. The quality of internal administration, procedural complexity, and career management based on merit and the actions of external watchdog agencies such as the press, the private bar, and civil society groups are the most significant factors influencing the level of corruption. Internal administration is mostly a matter of information about ongoing work. Excessive procedural complexity is related to sub-optimal internal administration. Career based on merit presupposes the knowledge and information required are available. The actions of external watchdog agencies, and public accountability more in general are evidently mostly about information. That makes information an important tool against corruption in courts and judiciaries. Consequently, technology that deals with information can be an instrument against corruption as well. Searching for potential remedies that can be supported by information technology in order to combat corruption and improve impartial decision making is, therefore, the next step. But before turning our focus on information technology, we need to address something else. Because the level of development and corruption in a system are related and so evidently relevant, we will first examine whether those levels are important for the type of corruption, and consequently also for the type of remedy.

Building institutions from the bottom up

When discussing corruption in courts and judiciaries, I distinguish four distinct corruption syndromes[7]. They are relevant for finding a proper starting point for reform in the respective syndromes. The four syndromes can be thought of as contrasting kinds of departures from a developmental ideal: that is, a system in which political and economic participation are open, vigorous, and broadly in balance, where political figures do not plunder the economy and wealth does not dominate politics, and where both sorts of activity are sustained and restrained by strong state, political and social institutions.

The syndromes reflect frequently encountered combinations of stronger or weaker political participation and stronger or weaker institutions:

1. The *Influence Markets* syndrome has fully developed, functioning democratic institutions, but it is weak on the participation side. Voter turnout is low, party financing is a critical issue. Corruption has been checked by legalizing the political role of wealth, policies favor moneyed interests; those policies may well be seen as the result of unfair or corrupt influence; international firms participate in corrupt practices in developing countries.
2. In the *Elite Cartels* syndrome, top figures collude behind a façade of political competition and colonize both the state apparatus and sections of the economy. Elections are fraudulent, indecisive, or uncompetitive. Institutions are moderately weak.
3. In the *Oligarchs and Clans* syndrome state, political and social institutions are very weak and ineffective, participation is risky. Politically and economically ambitious elites are insecure. They build bases of personal support from which they exploit both the state and the economy. Corruption of this type is unpredictable and a powerful source of injustice. Courts, the police and bureaucracy are hijacked as well.
4. In the *Official Moguls* syndrome, there is official impunity; institutions are very weak, popular participation in government is feeble and orchestrated from above, and corrupt leaders and their personal favorites exploit society and the economy, including aid and investment, rather than developing it.

The corruption syndromes approach is most helpful in uncovering the right starting points for remedies. The approach provides a nuanced understanding of the forces at work in each syndrome, the risks and opportunities, and possible starting

points for reform. Therefore, it is for those starting points that we use it in this context. The starting point for judicial reform to reduce corruption can, as the case may be, improving public trust, institutional independence, or basic administrative processes.

The general tendency emerging from the above, in looking for opportunities for reform to reduce corruption in judiciaries and courts, is to start building basic administrative structures and then build on this foundation in the next phase. When we look for the information aspect, case management and access to information are the two themes that emerge. The way cases are handled can be improved in all syndromes. What to do depends on the starting point: Where there is none, case management will have to be set up. That is an opportunity for creating procedures and management systems that will provide increased transparency, and thereby discourage corruption. Existing systems for case handling can be examined for ways of simplification to reduce opportunities for corruption. The chapter on case management will discuss case handling with information technology in more detail.

With regard to access to information in this day and age, the Internet is a relevant presence everywhere. Hence, the general public will increasingly come to expect transparency from public institutions, including courts and judiciaries. Courts and judiciaries in all syndrome groups have web sites. They also all have a need for improving public trust, though some more than others.

Summing up

Impartiality and integrity of courts and judiciaries are important for citizens. Judicial decisions that are not impartial or are perceived as not impartial undermine the role of judiciaries in society. Corrupt judicial decisions and corruption in the judicial organization are a user complaint in large parts of the world.

If corruption in judiciaries and courts is to be combated effectively, the first step is proper diagnostics to identify the problems, and locate possible remedies. General comparative and theoretical insights help to understand what to look for. Those comparative and general insights on causes and possible remedies will have to be fitted to the specific situations. In each country, proper diagnostics should also identify the corruption syndrome that can serve as the starting point, the possible stakeholders and the level of ownership for judicial reform. The reform strategy needs to fit to the syndrome that is applicable in the given context. Applied in the wrong syndrome, presumed remedies can turn into instruments of corruption.

There is potential for prevention in improving processes and professionalization. How information is handled is of strategic importance in the reduction of corruption.

Professionalizing courts and judiciaries is an important prevention strategy. What should be done first depends on the available starting point. Developing basic bureaucracy is the first possible step, generally in syndrome 3 countries. Introducing basic office technology can support the basic processes needed to process cases in an orderly, transparent manner. Also, information technology can support automated, improved case handling. Reducing both handling time and the number of steps needed to reach a judicial decision will reduce the opportunity for bribery. Information systems, if properly set up and used, will also increase the risk of detection and thereby reduce incentives for bribe taking for manipulating files and cases. The chapter on case handling will deal with improving case handling processes in more depth.

Professionalization also involves access to information and knowledge: training, education and some measure of self-regulation and self-discipline. Targeted training, in how to deal with cases and disputes as well as ethics, can be the starting point, even in situations where this is the only starting point available. That makes it a good point of departure in syndrome 4 countries. Research suggests that documents that need to go public are of better quality than those that can stay locked up (Blume p. 328). The Internet will increasingly become the vehicle for interaction between judiciaries and the public.

Implementing Information Technology

This section discusses what is needed when judiciaries and courts introduce forms of information technology. It outlines elements for a possible strategy in general terms. It also provides lines of reasoning for filling in the elements, derived from the findings of the study discussed above.

A strategy is a complex of choices informed by the goal to be achieved, experience in the past

and knowledge of the environment. A strategy contains a vision of what is to be achieved, and it then sets out to describe the elements needed to realize the vision.

Strategic vision

Judiciaries need, first of all, to have a strategic vision of their role in society, and of how information and IT are part of, and affect that role. This vision is the first element of the strategy. It informs everything that needs to be done to make the IT support administering justice.

The judiciary's roles in society, in general terms, are concrete and abstract legal protection: dispute resolution and confirming and specifying norms. In process terms, this means processing cases and communicating. Information is brought in by the parties, processed by courts and, with the use of other information, transformed into new information. This is the dispute resolution, case processing role. Making that information public is the norm confirmation role. At the present state of technology, dispute processing is supported by IT for process control (case management), document production (word processing) and information service (laws and court decisions). Norm setting (publishing decisions) is supported by communication technology. Technological innovation will bring new functionalities enabling change. This innovation will also require changes. For instance, access to justice may be increased if courts communicate information to prepare parties for court through the Internet, but it may require centralizing information service. Transparency and precision may be increased by courtroom technology in evidence examination, but it will require training and technical support in the courtroom.

Reform goals

Once the strategic vision is set out, the next element of the strategy is to determine what reform is needed.

Are the right things being done? If not, this calls for innovation, developing new activities. If access to justice is considered a problem, it may well be that communication of court information or court decisions through the internet can be developed in order to increase access.

If the right things are being done, are they done right? If something is not being done right, improvement is called for.

Both these choices are informed by standards and by information about actual practice. There are no universal, hard and fast standards. However, the conventions provide some very generally worded norms: timeliness, impartiality, access. Within this framework, norms are informed by the outside world and changing standards. Whether adjudication is timely, access is sufficient and impartiality is seen to be maintained, will need to be established periodically. The standards will keep changing. For example, a certain percentage of problems not being resolved may be considered acceptable at one point in time, but unacceptable in different circumstances.

The strategy will include the result of this operation: a list of possible reform goals.

Diagnostics

Diagnostics focus on problems and their verification. Whether the candidate reform goals are problems that merit attention can be verified with diagnostics. They will identify possible reform goals more accurately and locate possible remedies and the entry points for reform. For instance, timeliness can be verified by holding the results from the court case registration system up against applicable standards. Remedies take into account what is known about the role of information in the processes.

The level at which the judicial institution is functioning is essential for choosing appropriate remedies. Weak institutional development requires building a properly functioning organization through increasing professionalization.

Professionalization also involves access to information and knowledge: training, education and some measure of self-regulation and self-discipline. Diagnostics also identify gaps in knowledge and understanding.

Diagnostics are the basis for a more precise enunciation of reform targets and activities.

Knowledge and understanding

Translating reform targets and activities into IT applications requires understanding how information works in judiciaries and courts. This understanding requires both staff who combine knowledge of court processes with IT for IT strategy and IT development as well as knowledgeable IT personnel for managing the court systems.

Various sources can generate this understanding.

- Other court systems: judiciaries can learn from the experiences of other court

systems. Earlier implementers have more experience, like UK, US. Later adapters may be able to innovate more radically. Different legal systems provide different enabling frameworks.
- User experience: Users who experiment with technology in their work processes will develop new uses for existing technology. The results of such experimentation are important for innovation. Thus, the IT function can learn from the users
- Other sources: Information science, in the legal field and elsewhere, can provide new insights for improving and innovating with IT.

Fostering knowledge and understanding is a continuous process.

The IT strategy describes how it is done.

Managing change

Innovation and improvement both need to be managed. Judiciaries will need the skill and experience for managing change processes and projects. IT success in judiciaries has been in simplification: choosing simple procedures and simplify complex ones, starting small and moving forward in small steps, limiting the number of organizations involved and piloting approaches, and in choosing standard software wherever possible.

The IT strategy describes these change management principles and methodologies.

The state of court IT

The court IT, just like the court organization, should work properly. If it does not, the problems and possible remedies need to be located. This may require changes in IT management. This is an exercise that needs to be done regularly because IT will evolve, and so will court needs. The IT strategy will provide for this periodic examination.

Governance

Is the governance structure adequate for making decisions on policy, setting priorities? Where do problems arise?

The IT strategy as outlined above requires a governance structure that is able to support it. The judiciary's leadership and the IT function must understand how information works in their courts and what the implications for IT can be.

Prioritizing and controlling funding and budget allocation is also a necessity. Changes to the reporting and budgeting systems may be required. Policies, not just spending must be the focus of budgeting.

Needs for standardizing and external communication may require specialized functions and more central management.

The IT strategy describes if, and how, the governance structure needs to be reformed in order to meet the requirements of judicial reform with IT support.

The answers to the questions above will depend on the circumstances in the country in question. Whether the answers can be followed up will depend on what is possible in those circumstances. With all these elements in place, judiciaries can begin to program what needs to be done to make full use of information technology to improve their performance.

Some emerging research questions

Technology helps to provide information on processes. We can use that information to improve our processes to reduce delay and corruption, as well as improve access. Technology can also help us to generate knowledge about the substance of our work, thereby providing the means to generate standards and policies. Those standards and policies will enable private persons and organizations to resolve their own problems more often. They can also be a means to improve consistency and fairness in judicial decision making.

To conclude, here is my wish list for further research:

- A conceptual framework for researching IT use in courts.
- An inventory of implementation experience.
- The changing role of information and knowledge in legal practice.
- Information in complex judicial processes.
- IT for generating trends in judicial decisions.
- The roles of information in judicial integrity.

Further reading

So far, I have authored and/or edited the following documents related to the subject of this dissertation:

Rechtspraak 2005, the first ICT policy plan of the Netherlands judiciary (2000), in Dutch

Rechtspraak in de digitale delta (Nederlands Juristenblad 5 december 2003), in Dutch

Doing Justice with IT, Information & Communications Technology

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[1] Adopted by General Assembly resolution 217 A (III) of 10 December 1948

[2] Adopted by General Assembly resolution 58/4 of 31 October 31 2003. The Convention entered into force on 14 December 2005.

[3] The Bangalore Draft Code of Judicial Conduct 2001 adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table meeting of Chief Justices, held ad the Peace Palace, the Hague, November 25-26, 2002. It was submitted to the United Nations Commission on Human Rights at its 59th session in 2003.

[4] This section draws on presentations for the Australian judiciary, the American Bar

Association's Middle East judicial benchmarking project and the 2007 judicial reform conference of the Singapore Subordinate Courts.

5 The original letter is, of course, in French. The translation is mine. Here is the original text. ***« La meilleure loi »*** **selon Voltaire** Voltaire évoquait dans une lettre en 1745, une pratique judiciaire des Pays-Bas, de magistrats dits « faiseurs de paix » : *« La meilleure loi, le plus excellent usage, le plus utile que j'ai vu, c'est en Hollande. Quand deux hommes veulent plaider l'un contre l'autre, ils sont obligés d'aller d'abord au tribunal des juges conciliateurs, appelés faiseurs de paix. Si les parties arrivent avec un avocat ou un procureur, on fait d'abord retirer ces derniers, comme on ôte le bois d'un feu qu'on veut éteindre. Les faiseurs de paix disent aux parties : vous êtes de grands fous de vouloir manger votre argent à vous rendre mutuellement malheureux. Nous allons vous accommoder sans qu'il vous coûte rien. Si la rage des chicanes est trop forte dans ces plaideurs, on les remet à un autre jour, afin que le temps adoucisse les symptômes de leur maladie. Ensuite les juges les renvoient chercher une seconde, une troisième fois. Si leur folie est incurable, on leur permet de plaider, comme on abandonne à l'amputation des chirurgiens des membres gangrenés ; alors la justice fait sa main.*

6 This discussion is largely based on Hazel Genns Paths to Justice, and a Dutch study using the same methodology.

7 The syndromes approach is based on Michael Johnston's work, in the further reading list.

Figure 1 Conventions on access to courts

Conventions on access to courts

Universal Declaration of Human Rights

10 December 1948, General Assembly Resolution no. 217A(III), U.N. Doc. A/3

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

International Covenant on Civil and Political Rights

16 December 1966, General Assembly Resolution no. 2200A (XXI), U.N. Doc. A/6316

Article 14

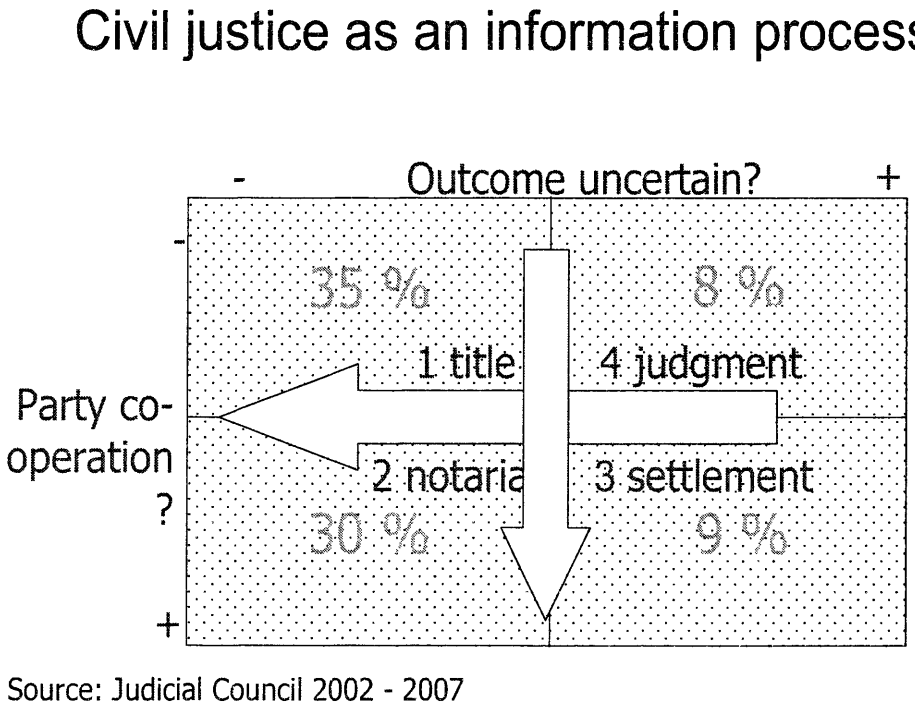
1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

Figure 2 Index on Countries

1 Country	2 WGI RoL 07	3 DB time in days 2007	4 HDI 2005	5 TI CPI 2008
Benin	36.2	720	0.437	3.1
Gambia	49.5	434	0.502	1.9
Georgia	42.9	285	0.754	3.9
Macedonia	41.4	385	0.801	3.6
Nepal	31.0	735	0.534	2.7
Netherlands	93.3	514	0.953	8.9
Romania	50.5	537	0.813	3.8
Sri Lanka	55.7	1318	0.743	3.2

Sources: World Governance Indicators, Doing Business, Human Development Index and Transparency International Corruption Perception Index.

Figure 3 Grouping of cases from the perspective of information processing



Source: Judicial Council 2002 - 2007