

Repairing a car with the engine running

SABINE HERTVELDT

Commercial cases in the Nigerian state of Lagos can now be resolved in about a year—in stark contrast to the situation during 16 years of military rule. In 1997 the average duration of commercial cases before the court was over 4 years, and new cases filed in the late 1990s did not stand a reasonable chance of being concluded within a decade. People had no faith in getting justice through the courts.

Lagos started reforming the courts after Nigeria returned to democratic government in 1999. The governor-elect of Lagos, Senator Bola Ahmed Tinubu, promised to put things right. Immediately after his election in late 1999, he created a justice policy committee to review the entire legal system. The head of this committee, Professor Yemi Osinbajo, commissioned a widely publicized study that showed the judicial system to be suffering from rampant corruption and severe backlogs: 99% of lawyers polled agreed that the Lagos judiciary was corrupt. And pending before the High Court in May 2000 were 40,000 cases, with 10,000 new cases filed every year.

As soon as he was appointed attorney general of Lagos in June 1999, Osinbajo started reforming the entire judiciary, relying on strong support from Tinubu. Judicial reform in Lagos continues today. While some reforms were implemented immediately after the new government was elected, others are ongoing 7 years later.

Corrupt judges dismissed

The 1999 Nigerian Constitution created the National Judicial Council, an independent body that can recommend the appointment and the dismissal of judges to the president and state governors.

Before 2000 no judge had ever been disciplined for corruption in Nigeria. To sanitize the Nigerian judiciary, the National Judicial Council instituted a review panel in 2001. Over the next 6 years it reviewed 130 judges, recommending 8 for dismissal, 15 for compulsory retirement, and 13 for reprimands. As of 2002, 21 magistrates and 3 high court judges were either dismissed or retired—the most thorough overhaul of the judiciary in Nigeria's history.

On 22 May 2001 the Lagos Judicial Service Commission appointed 26 judges from diverse backgrounds to the High Court, bringing the number of judges to 50 and reducing the average age from 55 to 44. The appointees went through a comprehensive 6 week training program, including legal, Internet, and computer training. In 2003 another 6 judges were added.

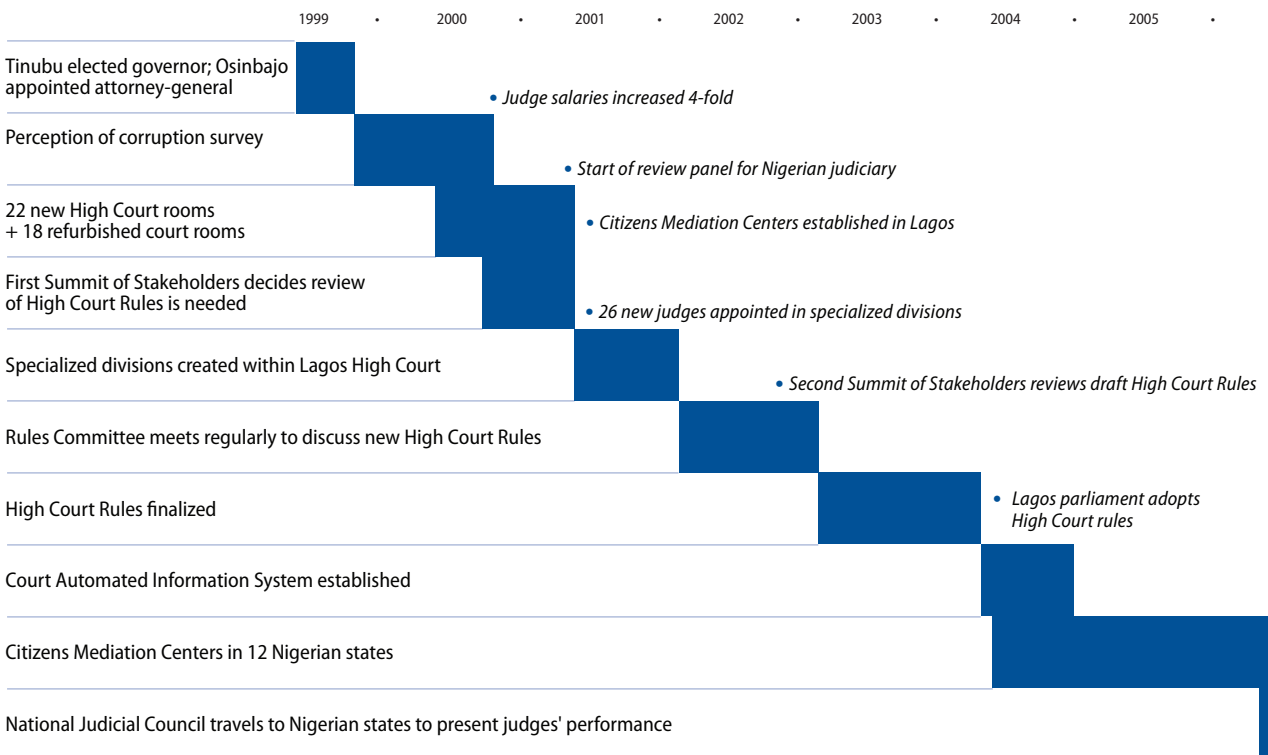
Appointing judges from various backgrounds—from universities, finance, and commerce—turned out to be a good strategy. Six years later, some of the most highly regarded judges are those with experience in areas other than courtroom litigation.

To attract the right caliber to the bench and reduce the dependence on bribe money, judges' monthly salaries quadrupled from \$600 to \$2,400 between 1999 and 2001. On top of the salary, each judge receives medical insurance, a free vehicle, and a family house. A study showed that the greatest concern for judges is post-retire-

FIGURE 11

Timeline of judicial reform in Lagos

Source: Doing Business database.



ment housing. The compensation package now allows judges to lead comfortable lives. And since 2000, the National Judicial Council has given each judge an allowance of \$1,568 for courtroom expenses, with auditors routinely inspecting expense receipts.

Also in 2000 and 2001, 22 new courtrooms for the High Court were constructed, and 18 were rehabilitated and supplied with computers, generators, and air conditioners at a cost of more than \$9.6 million. A challenge then and today is electricity, with the cost of fuel for generators running thousands of dollars a month.

In 2001, when the 26 new judges were appointed, specialized divisions were introduced in the High Court for commercial cases, land, family, revenue, criminal, and general civil matters. Each judge was appointed to a specialized division, depending on background and professional experience. For example, Justice Atinuke Ipaye, a former family law professor, was appointed to the family division. Justice Habeeb Abiru, a lawyer with extensive experience in property law, was appointed to the land division.

New rules for the High Court

On 16 October 2000, the Summit of Stakeholders on the Administration of Justice in the 21st Century concluded that reducing delays and decongesting the courts would be impossible without reviewing the court rules. The review started in April 2002.

The 10 members of the Rules Committee were chosen from private attorneys, serving and retired justices, the Lagos Ministry of Justice, and representatives of the Lagos branch of the Nigerian bar association. Hurilaws, a nongovernmental organization of human rights lawyers, prepared a first set of draft rules, inspired largely by the U.K. court rules after the Woolf reform. The Nigerian Institute of Advanced Legal Studies then drafted a second set of rules. From April 2002 to early 2003 the Rules Committee met weekly and sometimes daily to review existing rules and to take the best ideas from the 2 sets to produce a final version.

On important issues, such as introducing pretrial conferences, a committee member was asked to prepare a separate memo to be discussed at the following committee meeting. Heated debates took place on contentious issues, such as putting a cap on the number of extensions and adjournments, which some committee members said would violate fundamental rights.

In early 2003 the Rules Committee presented its draft rules at the second Summit of Stakeholders. All key officers of the justice system were present, which was particularly useful in winning over a group of opposing lawyers. The Rules Committee amended some of its rules and finalized them by the end of 2003. In March 2004 the Lagos State Legislature adopted them without changes and in June 2004 the new rules entered into force.

The new High Court rules include three innovations to reduce court delays and frivolous cases:

FRONTLOADING EVIDENCE. It is now mandatory for parties to submit all evidence they intend to rely on at the start of the legal proceedings. If the plaintiff fails to submit the evidence up front, his claim will not be accepted for filing at the court's registry. Because parties must submit witness depositions and copies of all documents they plan to use during trial, they are discouraged from filing frivolous claims meant only to exert pressure on the other party.

DEADLINES FOR ACTIONS. The 2004 rules specify timeframes to take certain actions. For example, defendants are expected to file a statement of defense within 42 days of receiving the statement of claims. The old rules had no timeframes.

PRETRIAL CONFERENCES. A promising aspect of the reform was the mandatory pretrial conference, an informal meeting of the judge and the parties to explore the possibility of settling the case amicably. The conferences also limit the areas of dispute and settle preliminary applications, such as challenges to the court's jurisdiction.

The 2004 Lagos High Court rules have served as a model for other Nigerian states.

Automating court information

The Court Automation Information System started in January 2005. Justice Abisoye Ayo, a judge in the commercial division, has managed it since inception. Having worked in the United States for an IT company, she closely monitors weekly progress made by all 300 judicial assistants and court recorders, court registrars, secretaries, and computer operators inputting court cases and case events into the system over the intranet. The objective was for all litigation cases to be uploaded to the system by April 2007. In the near future, lawyers will be able to register cases and follow them online.

The system seeks to reduce case backlog and court delays, assign cases randomly, and calculate court fees automatically. More important, it will measure, manage, and improve individual and overall judicial performance. Case disposition standards, based on type of case, are reported for each judge. The system will also monitor the performance of judges against targets.

Citizens mediation centers

As part of the Access to Justice Program, 5 citizens mediation centers, modeled on U.S. community mediation centers, opened in Lagos in 2000. In these centers, 38 trained mediators work to settle small disputes that would otherwise end up in the courts. The mediators are legal counsels, employed and paid by the Lagos Ministry of Justice.

The 5 centers in Lagos resolve disputes quickly, free of cost for the users, and they respond to people's need to have their day in court—without getting stuck with formalistic and lengthy court proceedings. The Lagos centers have so far reviewed more than 17,000 cases, resolving 15,950 of them amicably. Parties were advised to seek redress in court in only 332 cases.

Fewer cases go to court and fewer cases stay in court

FEWER COURT CASES ARE FILED. Up to 25-30% of all commercial cases are resolved during the first 5 months of the proceedings, and average court delays are much reduced. Further improvements in efficiency are expected.

FEWER CASES GO TO COURT. The citizens mediation centers in Lagos have handled 17,000 cases so far, many of which would normally have ended up in court. A large number of cases are now filed at the mediation centers because they are resolved faster, at a lower cost. In 2005, inspired by the enormous success of the centers in Lagos, all 35 state attorneys general decided to establish similar centers. Twelve are already in operation.

FEWER CASES STAY IN COURT. During pretrial conferences, judges meet with the parties informally and explain to each the strengths and weaknesses of the case. They tell the parties what the outcome of the case is likely to be if the case were to

go to trial. At the end of the meeting, the parties decide either to settle the case or go to trial. The judge drafts a pretrial conference report, describing the history of the case, the issues the parties are disputing, and the outcome of the pretrial conference. If the parties decide the case should still go to trial, the case is allocated to another judge, to avoid conflicts of interest between the judge acting as mediator and the judge acting as adjudicator.

Because of the mandatory pretrial conferences, up to 30% of all commercial cases are now disposed within the first 5 months of filing. Before the new rules were in place, all cases, once filed, stayed in court until a final decision was reached. To insure the continued success of pretrial conferences judges must be trained in their new role as mediators.

AVERAGE COURT DELAYS REDUCED. For commercial cases the average time to reach a decision after filing a case dropped by 38%, from 730 days to 457. That moved Nigeria from 105th to 66th position in the Doing Business rankings for contract enforcement. In cases where defendants do not persuade the judge that they have a reasonable defense, summary judgments can be given in about 8 months.

Reform is like repairing a car with the engine running

Nearly 85% of reforms take place in the first 15 months of a new government. Recently elected governments try to push reforms through at the start of their term, as Lagos did.

It did not take years of careful strategizing to build new courtrooms and repair existing ones. Less than a year after Osinbajo was appointed as attorney general of Lagos, 26 judges were appointed, specialized divisions set up, and judges' salaries increased.

Many judicial reforms fail because they address symptoms, not the problem's roots. To be effective, judicial reform must address all relevant issues at once, including: attracting and retaining the right people at the bench, disciplining lawyers who engage in delay tactics, establishing modern court rules, limiting the number of cases that go to court, limiting the number of inactive cases that stay in court for years, automating court procedures and measuring judicial performance.

Lagos did not only modernized its court rules, dismissed corrupt judges, and introduced alternative dispute resolution. It started a fight on all fronts, without allowing the challenges to affect its determination to provide a fair and efficient justice system, with access to justice for all.

WHAT GETS MEASURED, GETS DONE. Measuring performance enhances performance. This applies to all, including judges. If lazy judges are not disciplined and hard working judges are not compensated or promoted, performance flags.

The National Judicial Council monitors judicial performance at the federal level. In May 2006 officers from the Council traveled to the 36 Nigerian states to announce its ratings of individual judges. Those who scored poorly were invited to provide an explanation. Although the performance evaluation system is still developing and often criticized, judges now know they are being monitored by an institution with disciplinary power. This in itself has been useful: the poorest performers have already left the bench.

Measuring performance is useful at all levels, including the lowest: all support staff in the Lagos High Court must now submit weekly progress reports on the number of cases they enter in the court automation system. After Justice Abisoye Ayo collects the progress reports, she distributes them to all judges for them to see which staff members are performing well and which appear to be busy only when the judge is around. Healthy competition can do wonders.

ADJUST FOREIGN MODELS TO LOCAL NEEDS. Reformers often look abroad for inspiration. The citizens mediation centers were copied from the U.S. model, successful in large cities like New York. They do well because they are free and their procedures are simple.

But highly complex features from courts in developed countries cannot be easily transferred to developing countries. The committee in charge of the new Lagos High Court rules rejected the U.K. multiple case-track system because it was too advanced for Lagos.

IMPLEMENTING REFORMS—AVOIDING ONE STEP FORWARD, TWO STEPS BACK. Judicial reform needs constant fine-tuning. In Lagos the next challenges are establishing separate commercial courts with tailor-made rules for commercial cases and reducing the long delays before the appeals courts. Progress in the High Court risks being lost if reforms are not extended to the appeals court.

Initial positive results can disappear quickly, and disillusion over failed reforms can lead to questioning whether further reforms are worth the investment. To avoid the risk of going 1 step forward, 2 steps back, reforms must be implemented at all levels and their effects measured consistently.

That is why Lagos is now turning to its appeals courts. Of all cases pending before the appeals courts, 80% are against interlocutory orders from the High Court. Such orders deal with procedural issues, such as whether or not the court has jurisdiction to decide the case or whether the time limits to file have passed. Although High Court judges may continue to deal with cases while an interlocutory order is being appealed, some cases are suspended while waiting for the appeals court's decision. This is an important reason why the disposal time before the High Court is not faster and cases keep accumulating. Expanding the reforms and changing the appeals court rules can ensure progress continues.