

# The Judicial System

*Fair trial, fair judgment . . .  
 Evidence which issued clear as day. . .  
 . . . [Q]uench your anger; let not indignation rain  
 Pestilence on our soil, corroding every seed  
 Till the whole land is sterile desert. . . .  
 . . . [C]alm this black and swelling wrath.*

—Aeschylus, 458 B.C.

The *Gongyang Commentary* to the *Spring and Autumn Annals*, a fourth century B.C. text on law in China, illustrates a problem that all societies face. Analyzing a son's responsibility when the state has unjustly executed his father, the text concludes that without a public institution to settle disputes between private parties and between public and private parties, the only recourse open to those who seek justice is revenge. But revenge can spark an endless cycle of violence, as first one side and then the other retaliates. In many countries disputes over land and other assets have led to increased violence. The uprising led by Thomas Muentzer in 16th century Germany and the current debate in Zimbabwe are but two examples.

Adjudication of a dispute by a court of law offers an alternative, one where facts are carefully assayed and self-defense and other considerations that may excuse or explain the conduct are reviewed. In short, courts are a way to resolve disputes justly. Justice forms the basis of a lasting social order. The legal and judicial system must therefore provide a method for determining the truth and justice of the actions of private agents and of the state. Its primary responsibility is to ensure social peace.

Courts develop gradually, reflecting a society's own development. When society is a small, close-knit col-

lection of kin, informal means of intervention suffice to resolve conflicts. But as economic activity becomes more complex and commerce expands, group ties weaken, and the demand for more formal means of intervention grows. This pattern is exemplified by the rapid growth of commercial litigation in modern China. In 1979 China embarked on a path of economic reform that spurred new enterprise creation, increased interprovincial trade, and allowed the entry of foreign investors. The expansion of business was followed by an increase in the number of cases filed in commercial courts. In 1979–82 the average number of commercial disputes filed in the courts was around 14,000 a year; by 1997, 1.5 million new cases were filed—more than a 100-fold increase.<sup>1</sup> At the same time, the number of commercial disputes arbitrated by community committees, the traditional mediation mechanism, hardly increased. As the number of entrepreneurs grew, the enforcement capacity of informal dispute resolution mechanisms weakened.

The simplest means for resolving disputes is mediation. Mediation has been used to settle disputes in both small and large cases and in both village and urban communities. Mediation provides a low-cost way to resolve disputes and is found in every society. But mediation has its limitations (box 6.1). There is nothing to compel the parties in a dispute to reach settlement; social norms may not provide a sufficient incentive.

A more formal method for exerting public control over disputants was employed in the ancient Near East, the Carolingian empire, and medieval France. A person who anticipated becoming the target of a self-help remedy initiated the process. This could be a debtor who feared that a creditor was about to seize his property to satisfy an obligation. The initiating party (the

**Box 6.1****How mediation resolves disputes**

Generally, a mediator has no enforcement powers. An elder or a community leader that both disputants respect may help them find common ground but need not have power to impose a solution. A pure negotiator presents each side's position to the other, while a mediator can suggest solutions of his or her own. In either case the only requirement is that the solution be acceptable to both parties.

Unlike judges, mediators need not sort out conflicting legal or factual claims. Nor do they usually prepare a written opinion showing how the settlement conforms to the law. They require no specialized training or expertise. Mediation does not require enforcement capacity, either. Compliance is ensured because the settlement rests on both parties' consent.

While a mediator is free to suggest any settlement the parties can agree upon, in all societies norms play a significant role in determining the type of solutions reached (chapter 9). Tacitus, the first-century Roman historian, reports that among German tribes a murderer could compensate for his crime by the payment of a certain number of cattle or sheep to the victim's family. Ethnographic studies of more contemporary tribal societies describe similar norms. Among the Nuer of Sudan, guidelines specify the compensation generally required to settle cases of homicide, bodily injury, theft, and other wrongs. While such norms reflect moral judgments, they serve a practical end as well. They reduce the cost of reaching a settlement by providing the mediator a point of reference in discussions with the two sides.

But even when underpinned by supportive social norms, mediation has its limitations. Even in a society such as the Chinese, where strong cultural preferences toward mediation prevail, less than two-thirds of cases filed with arbitration committees between 1979 and 1997 reached settlement. By 1997 six times more commercial disputes were handled through the formal commercial courts than through the arbitration committees. In Russia an enterprise survey conducted in mid-1997 revealed that less than 8 percent of managers who faced commercial disputes used private arbitration courts to resolve problems with their suppliers. In contrast, more than 92 percent of those managers used commercial courts to file grievances.

*Source:* Evans-Pritchard 1940; Hendley, Murrell, and Ryterman 2001; Pie 2001.

debtor, in this case) would request a declaration that under the circumstances, self-help was unjustified. If the court hearing the case agreed, the target of the expected attack was entitled to society's protection. If the court disagreed, it sanctioned the use of private force to secure redress. The seeds of a modern court system

are visible in sanctions like these. Rather than urging or pressuring a party to accept a resolution, society is now imposing one.

These key elements—state-backed decisions, reached after an independent fact-finding and developed in harmony with prevailing social norms—are what distinguish courts from the various forms of mediation. Enforcement is entirely taken out of the hands of private individuals. This in itself can significantly reduce the potential for violence and improve the business climate.

But for courts to be effective, rulers must follow the law, too. The judicial system must also provide checks and balances on arbitrary state action. Forcing rulers to follow the law is a problem as old as government itself. Even when a ruler accepts the principle, there is the challenge of devising an institution that can determine when the government has violated the law and fix an appropriate sanction.

Once a court has been established, its efficiency is defined in terms of the speed, cost, and fairness with which judicial decisions are made and the access that aggrieved citizens have to the court. This chapter focuses on commercial dispute resolution. It presents evidence on the determinants of the efficiency of legal and judicial systems across countries today. It discusses elements of judicial reforms that are part of an overall reform of the government but also discusses elements of judicial reform that do not depend on comprehensive reform of the government or the legal system. This distinction is important. Different types of institutional reforms may be opposed by different interest groups—and this will vary between countries. But there are several areas in which countries can begin reform without fearing strong opposition.

A main finding is that the simplification of procedural elements is associated with greater judicial efficiency; both costs and delays are reduced. In many developing countries procedural complexity reduces judicial efficiency. This is particularly important given lower levels of administrative capacity and human capital, higher initial levels of corruption, and fewer complementary institutions. Complex procedures also facilitate corruption in the absence of transparency. Where supporting institutions, human capital, and resources exist, complexity has fewer costs for efficiency.

The experience with judicial reform over the last two decades highlights the importance of open information flows. The evidence suggests that reforms that introduce greater accountability of judges to the users of the

judicial system and to the general public have been more important in increasing efficiency than the simple increase in financial and human resources. In developing countries accountability can be enhanced through the provision of more information on judicial outcomes. In many cases strong civil society groups and the media, acting as outside monitors, have changed the behavior of judges and lawyers (chapter 10). Implementing judicial databases that make cases easy to track and hard to manipulate or misplace can enhance accountability and therefore the speed of adjudication. Individual calendars make explicit the link between a judge's case management record and his reputation. The provision of such statistics—even without any enforcement mechanism—has been found to reduce delay. Statistics are most effective when information on clearance rates and times to disposition for judges are individualized and when they are available to the media. Finally, partially delegating the mechanics of procedural reform to the judicial branch can speed the process of reform. Where procedures are transparent, allowing some degree of innovation and experimentation by judges can help increase judicial efficiency.

The provision of information, simplicity, and increased accountability affect not only cost and speed, but also fairness. The evidence shows that in judicial systems that rely excessively on written procedures, a shift toward oral hearings tends to make trials simpler, faster, and cheaper, without an appreciable loss in fairness, since the judge has direct contact with the evidence. Fairness, in the context of the judicial system, can be interpreted as the consistent application of the law regardless of the nature of the parties involved.<sup>2</sup> The *perceived* fairness of the rules or laws varies depending on each society's values and political and social structure. There are two main sources of unfairness. The first occurs when judicial decisions are not independent of political decisions, and when the courts cannot ensure that other branches of government will obey the law. Second, unfairness can also arise when powerful private parties influence court decisions.

Who benefits from the improvement in the quality of the judiciary in handling commercial disputes? The evidence suggests that well-developed formal mechanisms to enforce contracts make *everybody* better off (see box 6.2). For example, both debtors and creditors gain from efficient insolvency resolution.<sup>3</sup> The evidence also shows that greater judicial efficiency may be particularly important for smaller and unaffiliated entre-

### Box 6.2

#### Who benefits from better courts?

During the early 1990s the collapse of formal enforcement mechanisms in Poland and Slovakia resulted in long delays in payments to farmers for delivering their products to upstream processing plants. In response, agricultural cooperatives attempted to build their own vertically integrated processing capacity. In turn, the processing plants introduced seeds and fertilizer and investment facilitation programs for farmers that delivered products to them. For example, the Polish dairy subsidiary of Land O'Lakes pre-financed feed for milk farmers and provided loans for milking equipment. While these private mechanisms in effect substituted for formal contract enforcement, they increased the cost of doing business. The development of judicial enforcement in the late 1990s in Poland and Slovakia resulted in the quick disappearance of these temporary private mechanisms.

Source: Gow and Swinnen 2001, p. 5.

preneurs and firms. Studies on commercial litigation in Italy, Romania, Russia, Slovakia, Ukraine, and Vietnam show that newly created private enterprises, which do not have established supplier and customer networks or significant market power, are most likely to resort to the use of commercial courts.<sup>4</sup> Older, especially state-owned, enterprises are often able to settle disputes out of court. Similarly, a study on firms in severe financial distress in Indonesia, the Republic of Korea, Malaysia, the Philippines, and Thailand finds that firms that are affiliated with business groups are half as likely to file for formal bankruptcy as unaffiliated businesses.<sup>5</sup> Instead, affiliated firms negotiate the rescheduling of debt payments with their creditors informally, relying more on reputational mechanisms and less on formal court procedures. This pattern is also illustrated in a recent study of the software industry in India.<sup>6</sup> The study shows that young firms are significantly more likely to have fixed-price contracts and to bear the overrun costs in complex contracts. This is not because of inferior product quality. Young firms often outperform established firms in the production of high-quality products. Rather, these findings suggest that the primary beneficiaries of well-functioning commercial courts are new, small firms, unaffiliated with either private business groups or the state, run by those who do not necessarily have established social connections.

This chapter begins with a comparison of legal systems around the world. It then assesses the recent re-

### Box 6.3 Surveys on judicial performance

The most popular method for assessing judicial performance relies on surveys based on public perceptions of the weaknesses of the judicial system. Some surveys depend on in-house legal experts who summarize the relevant literature for each country but do not have first-hand knowledge of the judicial system, while others survey business executives.

However, people's perceptions are colored by their expectations. Coverage also depends on the availability of information, which is generally better in richer countries. Despite weaknesses with these surveys, they do convey some information. Richer countries have less corrupt judicial systems, which in turn helps their business community and supports economic growth. Other data show that the public's perception of corruption in the judiciary is very highly correlated with its perception of corruption in government.

form experience of countries and concludes with a discussion of the determinants of judicial independence. Issues of civil service reform are not discussed here, but they were the topic of *World Development Report 1997*.

### Comparison of legal and judicial systems

Legal and judicial systems vary substantially across countries in terms of their output. In Latin America the average duration of commercial cases is two years, and it is not uncommon for complex commercial cases to take more than five years. In Ecuador the average case takes almost eight years to reach a verdict. In contrast, it takes less than a year to reach a verdict in Colombia, France, Germany, Peru, Singapore, Ukraine, and the United States for similar cases.<sup>7</sup>

Reform of the legal and judicial system depends critically on a sound understanding of its existing structure and level of efficiency. Description of the key characteristics of the system and measurement of the speed and cost of judicial decisions are crucial. However, it is only in rare cases that governments have developed indicators to track the development of the judiciary. There is very little systematic evidence on the structure and performance of the judiciary and on the determinants of its performance. Recently, there have been some attempts to fill this gap (box 6.3). Legal scholars have focused their efforts on documenting the inputs into the judicial systems (number of judges, budget of the judiciary branch, number of administrative support staff),

**Table 6.1**  
Inputs into the judicial system for selected countries, 1995

(per 100,000 population)

Country	Professional judges	Other judicial staff	Incoming cases in first-instance courts
Austria	21	117	29,294 <sup>a</sup>
Brazil	2	n.a.	2,739
Ecuador	1	n.a.	10,467
England and Wales	5	4	4,718
France	10	41	2,242
Germany	27	69	2,655
Italy	12	60	1,227
Netherlands	10	n.a.	2,031
Panama	3	n.a.	1,656
Peru	1	n.a.	2,261
Portugal	12	70	3,719
Spain	9	83	1,898

a. Including summary cases.

Source: Contini 2000; Buscaglia and Dakolias 1996.

access to justice, and the workload of judges (measured by the number of cases filed and resolved within a given period). The output these studies measure is the number of resolved cases. Examples include studies on eight European countries and a World Bank study on seven Latin American countries.<sup>8</sup> Table 6.1 reports some indicators compiled from these comparative studies.

There are significant problems in making meaningful comparisons between the ways that different judicial systems function. Difficulties are encountered even in defining the concept of a "judge." In one country a legal dispute might be dealt with by a professional judge in a formal courtroom, while in another country a similar dispute might be handled by a public official who is not a judge or a lawyer. In other cases the same dispute might be resolved by an unpaid volunteer lacking any legal qualifications.

The table shows large differences in the number of legal professionals, even across advanced European countries. In some countries lay judges staff labor tribunals and small claims courts. Austrian judges have the most support staff (117 per 100,000 inhabitants). Adjudication services are also organized differently across industrial countries. Ecuador and Peru have one judge per 100,000 people. This is an order of magnitude smaller than the number of judges in Western European countries. Not all countries with efficient judicial systems have many judges, however. Singapore and

the United States have fewer than one judge per 100,000 people.

### New evidence on two aspects of judicial efficiency: speed and cost

This Report uses a detailed survey of practicing lawyers to benchmark the relative efficiency of judicial systems and the access to civil justice in 109 countries (box 6.4 provides details of the methodology).<sup>9</sup> The survey focuses on the complexity of litigation, that is, on how difficult it is for a layperson to pursue a legal procedure in defense of his interests. Elements investigated include the various steps in the litigation process, the difficulty in notification procedures, the complexity of the complaint, and the possibility of suspension of enforcement because of appeal (box 6.5).

For the countries in which the procedures are complex, the adjudication process is perceived to be less efficient even after adjusting for the level of income (figure 6.1a). The data indicate that the complexity of litigation does not decrease uniformly as national income per capita declines (figure 6.1b). This shows that the developing countries with the fewest resources and weaker judicial capacity also have complex procedures. One explanation is that the judicial system in these countries is more prone to failure and that the complexity of litigation ensures the availability of checks and balances on the way to the final judicial decision. Alternatively, procedures may be put into place to limit access to the judicial system and favor more privileged individuals or firms. Some developing countries, however, have simpler procedures, and several countries have undertaken reforms of judicial processes. Among the industrial countries, while some may have more complex procedures, the superior enforcement capacity and presence of complementary institutions and higher levels of human capital counteract the negative effects of complexity (figure 6.1c). Complementary institutions include rules affecting judge's incentives, rules promoting greater transparency, rules affecting other litigants' incentives, and clearer substantive rules.

Another variable that distinguishes judicial systems is the type of judge that presides over a case. First, judges may preside over a general jurisdiction court or over a limited jurisdiction court. Limited jurisdiction courts include specialized courts, such as small claims courts or bankruptcy courts, and alternative dispute resolution mechanisms, such as arbitration committees and justices of the peace. Second, the judge or the mem-

### Box 6.4 Comparing judicial efficiency

A survey developed for this Report analyzes particular aspects of judicial systems. It does so through detailed questions addressed to lawyers. The data systematically compare the pace of litigation by means of a standardized survey delivered to private law firms in 109 countries. The survey presents two hypothetical cases that represent typical situations of default of an everyday contract: (a) the eviction of a tenant; and (b) the collection of debt (a returned check or an invoice in countries where checks are not popular).

These two cases proxy for all types of commercial disputes that enter the courts. Two quite different cases are chosen in order to check whether the findings can be generalized to all civil litigation. The questions cover the step-by-step evolution of these cases before local courts in the country's largest city. Importantly, the survey studies both the structure of the judicial system—that is, where the plaintiff would seek redress in specific cases—and the efficiency with which judicial decisions are made.

The survey chooses cases in which the facts are undisputed by the parties but where the defendant still does not want to pay. The judge consistently rules in favor of the plaintiff. In this way the survey controls for fairness across countries, as judges follow the letter of the law. We assume that no postjudgment motions can be filed. Should any opposition to the complaint arise, the judge always decides in favor of the plaintiff. The data consist of the number of steps required in the judicial process, the time it takes to accomplish each step, and the cost to the plaintiff. The last provides a comparable measure of access to the judicial system, while all three address the issue of judicial efficiency. The questionnaire makes a distinction between what is required by law and what happens in practice.

The following are examples of questions asked: What is the most commonly used mechanism for collecting overdue debt in your country? Does this mechanism differ if the debt amount is small, equal to 5 percent of GNP per capita, or large, equal to 50 percent of GNP per capita? What types of court will this mechanism be applied through? Would the judgment in the debt collection case be an oral representation of the general conclusions, an oral argument on specific facts and applicable laws, or a written argument on specific facts and applicable laws?

*Source:* Lex Mundi, Harvard University, and World Bank. *World Development Report 2002* background project.

bers of the court may not be professional judges who have undergone professional training in the law. Further, their primary activity may not be to act as a judge or a member of the court. In contrast, a nonprofessional judge can be an arbitrator, an administrative officer, a merchant, or any other lay person who is authorized to hear and adjudicate the case.



### Box 6.5 Index of the complexity of litigation

This index measures how complex judicial litigation of simple commercial disputes is, and therefore how difficult it is for a layperson to pursue a legal procedure by herself in defense of her interests. The index ranks from 0 to 1, where 1 means that litigation is very complex, while 0 means that it is not. The index is formed by adding five equally weighted variables:

*Legal language or justification.* This describes how much legal language or legal justification is required in different stages of the process.

*Notification procedure.* This describes the level of complexity involved in the process of notification of the complaint (service of process) and the notification of final judgment.

*Legal representation.* This describes whether for the case provided, the legal assistance of a licensed attorney would be required by law or by practice.

*Complexity of complaint.* This evaluates the level of complexity for preparing and presenting a complaint for the case.

*Suspension of enforcement because of appeal.* This describes whether the enforcement of final judgment would normally be suspended when the losing party files an appeal until the appeal is finally decided, or if judgment is generally enforceable.

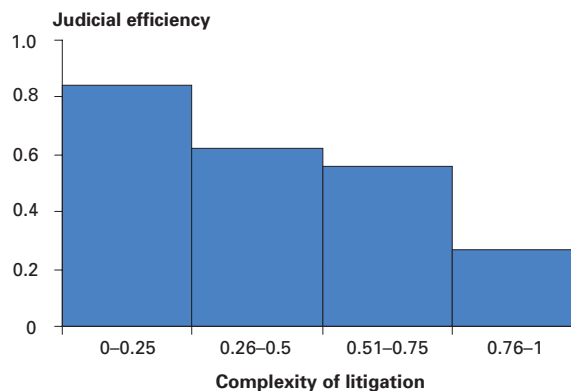
Source: Lex Mundi, Harvard University, and World Bank. *World Development Report 2002* background project.

Countries such as Australia, Belgium, Singapore, and the United States have fewer requirements for judges. At the other end of the spectrum, Ecuador, the Arab Republic of Egypt, Italy, Lebanon, and Morocco require simple debt collection cases to be heard by professional judges in general-jurisdiction courts. This increases the public finances necessary for litigation and greatly lengthens the duration of each trial.

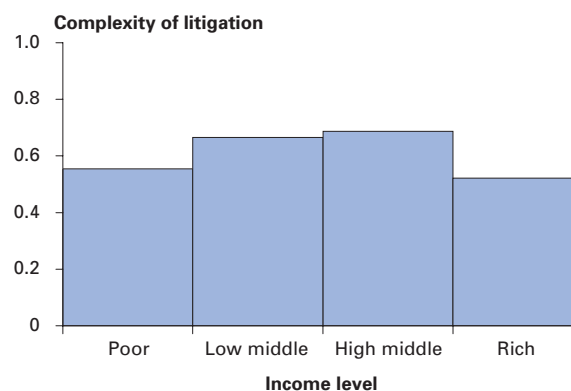
A complementary measure is the type of legal assistance necessary for a lay person to bring a case to the court. As discussed below in the section on judicial reform, the need for professional legal representation greatly increases the cost of litigation, serving as an entry barrier to the court system for poor members of society. For the cases studied in this report, few countries make representation by a professional lawyer mandatory. Those that do are all middle- and low-income countries, such as Ecuador, Lebanon, Morocco, the Philippines, and Venezuela.

Countries differ significantly in terms of the duration of simple civil litigation related to commercial disputes. It takes less than three months to reach a judge-

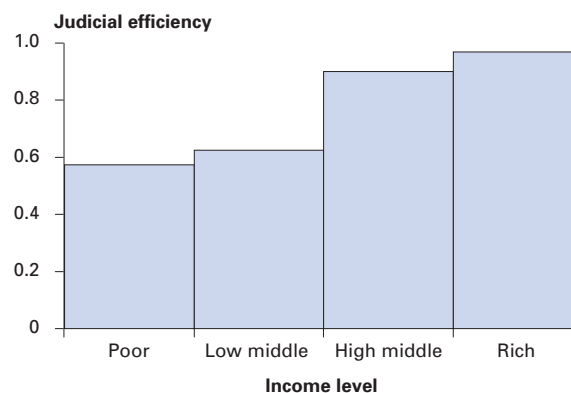
**Figure 6.1**  
**(a) Procedural complexity reduces efficiency**



**(b) Rich countries also have complex regulations, but . . .**



**(c) . . . they have more efficient systems because of complementary institutions and capacity**



Note: Higher values indicate greater efficiency (figures 6.1a and 6.1c) or greater complexity (figure 6.1b).

Source: Lex Mundi, Harvard University and World Bank. *World Development Report 2002* background project.

ment on small debt collection, equivalent to 5 percent of GNP per capita, in Denmark, Japan, New Zealand, Singapore, and the United States. In contrast, it takes more than two years to reach a judgment in Colombia, the Czech Republic, Kuwait, Malta, Mozambique, and the United Arab Emirates.

Enforcement of judgment differs significantly between countries. In the richest quartile of countries it takes on average 64 days to enforce a judgment on small debt collection once the judge has produced an opinion. The countries in the poorest quartile fare worse. On average, it takes 192 days—a long time, particularly for small businesses with little access to credit—to collect debts once a judgment is rendered.

There are also differences among countries at similar income levels. For example, countries differ in how long it takes to enforce a judgment. In the poorest quartile of countries the average duration from judgment to enforcement in debt collection cases is only 18 days in Ghana, but almost 450 days in Senegal. This diversity of enforcement efficiency again suggests that it is possible to undertake simple reforms of the judicial system in developing countries that can significantly enhance access for small firms and poorer entrepreneurs. This means that policymakers need not wait for overall reform of the judiciary but can work on improving certain aspects. While large-scale judicial reforms may face some political opposition, others may be more feasible in the short run. In some cases effective reform may mean building a new institution, such as a specialized court, rather than modifying old ones (see the discussion on judicial reforms below).

The survey underscores how countries vary greatly in the details of the law as well as the enforcement of the law. And these difficulties can affect efficiency. First, the speed with which the same case is adjudicated in different countries varies enormously. For example, it can take anywhere from 35 days (Singapore) to four years (Slovenia) to solve a commercial dispute that involves a returned check. Second, a large part of this difference can be explained by the procedural structure of the judicial system. This includes the prevalence of oral versus written procedures; the existence of specialized courts, including small claims courts; the possibility for appeal during or after the trial; and the allowed number of appeals. Third, some characteristics of the judicial system are much more likely to be associated with superior judicial performance. For example, the existence of oral procedures and continuous court cases

### Box 6.6 Debt recovery in Tunisia

In Tunisia the recovery of overdue small debts is normally achieved by means of a special procedure called *injonction de payer* before a general-jurisdiction judge. Provided that the debt has been proven and established, the judge grants the injunction to pay. The debtor cannot oppose the order. Therefore, the civil lawsuit excludes the usual stages of service of process, opposition, hearing, and gathering of evidence. On average, the entire procedure from filing until payment takes less than a month.

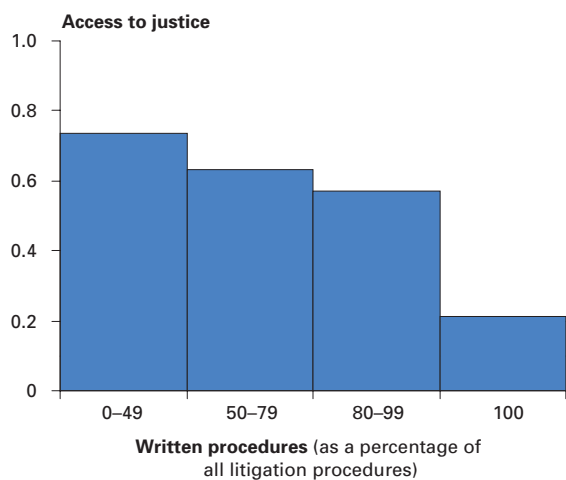
This simplified procedure does not mandate legal representation. Legal costs are very low, approximately \$54 when represented by a lawyer, and zero if the plaintiff represents herself. There are no court fees for the injunction, and the plaintiff only pays bailiff fees, of around \$20, for the actual collection. In contrast, many countries at a similar level of economic development have a considerably lengthier and more costly process for small debt recovery. Recovering small debt in Venezuela, for example, involves a complicated process. The parties to the case and the adjudicators must go through 31 independent procedural actions from filing of the lawsuit to payment of the debt. The average duration of the process is about one year, and legal representation of parties is mandatory, as is the case in most other Latin American countries. Small debt recovery in Venezuela is also associated with markedly high legal costs. Average attorney fees are approximately \$2,000, while court fees reach \$2,500.

Source: Lex Mundi, Harvard University, and World Bank. *World Development Report 2002* background project.

(the court meets on continuous days until the case is resolved) explains much of the variation in the length of commercial dispute resolution (box 6.6).

The study also indicates that 90 percent of procedures for Costa Rica, Ecuador, Guatemala, Morocco, and Senegal, and 100 percent for Argentina, Honduras, Spain, and Venezuela, are written. Not surprisingly, the judicial process of collecting debt lasts on average 180 days in Honduras, 300 days in Argentina, and 432 days in Senegal. The predominance of written procedures is evident in some of the industrial countries as well. For example, in both Norway and Japan 80 percent of all judicial procedures in the debt recovery case studied require written documents. Yet the duration of cases is reasonably short: 90 and 60 days on average, respectively. This evidence suggests that complicated procedures are especially problematic in poorer countries, where they may facilitate corruption or be unsuitable given the existing levels of administrative capacity. Also, they frequently serve as barriers to entry for poor people.

**Figure 6.2**  
**Excessive written procedures limit access to justice**



Note: Equal number of countries in each category. Higher values indicate greater access. Access to justice is defined as the extent to which citizens are "equal under the law, have access to an independent, nondiscriminatory judiciary, and are respected by the security forces. Scale from 0 to 10. The higher the rating, the greater the degree of equality under the law" (Freedom House 2000).

Source: Access to justice: Freedom House 2000; written procedures: Lex Mundi, Harvard University, and World Bank, *World Development Report 2002* background project.

When building effective judicial institutions, policymakers aim to establish courts that decide cases cheaply, quickly, and fairly, while maximizing access. These variables are not independent of one another. However, the evidence indicates that tradeoffs among them exist only at the margin. For example, when judicial performance is very slow, improvements in speed can be made without compromising fairness. A recent study from Argentina suggests that policymakers are not always bound by such tradeoffs; it demonstrates that to be fair, the justice system need not be slow, but many policymakers use the existence of a tradeoff as an excuse for maintaining the status quo.<sup>10</sup>

Access to the judicial system, partly by the poorer members of society, can be limited by factors such as procedural complexity, whether legal representation is required, and high financial costs. For example, where most procedures are in written form rather than oral, access is limited (figure 6.2).

The types of cases a nation's courts tackle represent policy choices. The procedure for resolving a dispute must be proportionate to the value, importance, and

complexity of the dispute. Low-value or simple disputes might be assigned to simpler and faster procedures consuming fewer court resources. For example, disputes over small amounts of money should be handled by small claims courts. The World Bank has been involved in establishing this system in the Dominican Republic, where it was discovered that more than 80 percent of commercial cases involved trivial amounts of money.

Policy choices should also be dictated by public preferences. For example, recent empirical work suggests that disputants value the chance to describe their version of the story to an impartial adjudicator; that is, oral procedures in front of a judge are perceived as particularly "fair." In fact, this "day in court" factor outweighs every other variable tested, including the actual outcome of the dispute.<sup>11</sup>

### Judicial reform efforts

Attempts to improve judicial efficiency have varied widely across industrial and developing countries.<sup>12</sup> However, three key themes run through the successful initiatives to improve judicial efficiency.

- *Increased accountability of judges.* For public sector employees, ensuring accountability is the mirror image of private sector contracting. The judge is contracted to provide efficient adjudication. However institutional features of the judicial system and the presence of complementary institutions (such as the media) affect the incentives of judges to provide such adjudication. The provision of information on judicial performance and monitoring play a key role in affecting judges' incentives and accountability. Accountability can also be increased through pressure from civil society.
- *Simplification.* Simplification of legal procedures can lead to more efficient outcomes. Simplification may result from replacing written hearings by oral ones or by creating specialized courts. An excessive emphasis on procedure may undermine fairness, but so may excessive informality. As explained earlier, however, the evidence shows that judicial systems in developing countries which suffer from capacity constraints also suffer from an excess of formality and complexity of procedure.
- *Increased resources.* In some countries the judiciary seriously lacks resources. In such cases, additional resources have been found to improve judicial ef-



efficiency. But in most cases, increased resources for the judiciary enhance efficiency only if they complement more fundamental reforms, such as eliminating all easily identifiable redundancies and inefficiencies in the judicial system. Recently, the Philippine Supreme Court asked for a large increase in public funding. However, a report by the Center for Public Resource Management, a Philippine NGO, has identified a large number of duplicative units and functions within the office of the clerk of court and the office of the court administrator. There are also 11 separate records divisions in the various offices of the Supreme Court. These units are not electronically or manually networked. Each maintains its own records processing, filing, and archiving functions. It is estimated that if these redundancies were eliminated from the judicial system, resources equivalent to 8 percent of its budget would be freed for other uses.<sup>13</sup>

### *Accountability*

When judges are accountable for their actions, judicial systems can become more efficient, with judges providing faster and fairer solutions to cases. The incentives judges face affect judicial performance. Institutional design, in turn, affects judges' incentives. One of the primary factors affecting incentives is information on judicial performance, which allows the performance of judges to be monitored. A frequently used alternative is the imposition of legislated time limits on the resolution of particular types of cases. While legislated time limits have been a popular response to slow trials, the results to date have not been very encouraging. For example, in the United States time limits originally set by the Supreme Court have proved unenforceable. This is partly because it is difficult to monitor judicial effort. There is no objective way to tell whether a case drags on because it has legitimate difficulties or because a judge fails to do her job. As another example, judges in Argentina and Bolivia are given mandatory time limits to conduct and decide cases, but these are rarely enforced.

Systems where each judge works on the basis of an individual calendar have had some success. In such systems a single judge follows a case from beginning to end. This is in contrast to the master calendar, where the court can assign different parts of a case to different judges. The master calendar has some advantages; a case

can go on if a judge is sick or has a large workload, and judges can specialize in the procedural tasks that fall in their area of expertise. But there are drawbacks as well. No judge is fully familiar with the case, different judges can rule inconsistently in the same case, and—when a case takes a long time in a master-calendar jurisdiction—it is hard to know who is responsible. Some studies have found that the individual calendar is associated with reduced times to disposition, not only because the judge in charge is more familiar with her own cases, but also because judges feel more accountable.<sup>14</sup>

Generating accurate statistics reduces delay, since judges care about their reputation. Such an effect has been reported, for example, in Colombia and Guatemala.<sup>15</sup> The experience with delay reduction programs in the United States suggests that because problems on a case, such as excessive delay, can be uniquely traced to a judge, individual calendars make judges work harder and manage cases more effectively.<sup>16</sup> More broadly, reputational effects are a crucial determinant of whether delay in courts is severe. Reputational concerns are difficult to measure, however. Reforms such as reporting judicial statistics are effective because they provide a basis on which to assess judges' efficiency and therefore affect their reputation.

Apart from hard statistics, greater transparency in the conduct of judicial business, coupled with a judge's interest in her reputation and desire for prestige, improves judicial efficiency.<sup>17</sup> This has been documented in several industrial countries. When judges have open trials, lawyers, litigants, the media, and the general public observe their conduct. A review of the impact of televising judicial proceedings in New York state found that such scrutiny raises the efficiency of judges by one-third while at the same time increasing the quality of their judgments.<sup>18</sup>

Civil society groups can play an important role in helping to increase accountability in the judiciary. For example, in 1994 Argentina's *Fundación para la Modernización del Estado* and *Instituto para el Desarrollo de Empresarios en la Argentina* published a report on the need for greater transparency as part of a judicial reform proposal. Also in Argentina, *Poder Ciudadano* formed a commission with other civil society organizations to follow the work of the new Judiciary Council. This group requested public access to hearings of the council and issued reports on its functioning.

In the Philippines the Foundation of Judicial Excellence, the National Citizens Movement for Free Elec-

tions, and the Makati Business Club established the CourtWatch project in 1992. They sent two observers, usually law students, to courtrooms over an extended period of time. The observers rated judges after each visit, based on direct observation and surveys of lawyers and prosecutors involved in the case. The ratings included the judge's familiarity with the law, as well as the conduct of the proceedings, on such measures as promptness, efficiency, and courtesy. Soon after the program began, the media noticed that judges' behavior had changed and that the efficiency of the court had risen significantly.<sup>19</sup>

### *Simplification and structural reform*

Simplification of procedures and enforcement has been found to improve judicial efficiency (as shown in figure 6.2). Three main types of simplification or structural reform are considered in this section: the creation of specialized courts, alternative dispute resolution mechanisms, and the simplification of legal procedures.

*Specialized courts.* The structure of adjudication can be changed by creating specialized courts. These courts may be specialized around the subject matter (such as bankruptcy and commercial courts) or around the size of the claim. Creating or extending small claims courts are among the most successful of all judicial reforms. There are many examples. In Brazil, for example, small claims courts have halved times to disposition and expanded access to justice.<sup>20</sup> In Hong Kong, China, it takes only four weeks from filing a case to its first hearing in the Small Claims Tribunal.

These courts are very popular in industrial countries too. Recently, the United Kingdom, which has had a history of success with small claims courts, increased the threshold on disputes that can be brought to these courts to £5,000. Small claims courts are also popular in Australia, Japan, and the United States.

Specialized courts with a particular subject-matter jurisdiction can also increase efficiency. Such courts have been set up for streamlined debt collection in several countries, including Germany, Japan, and the Netherlands. Labor tribunals in Ecuador have been associated with reduced times to disposition. Many of these specialized courts emphasize arbitration and conciliation, so some of the positive results for specialized courts may be the result of their emphasis on alternative dispute resolution methods.<sup>21</sup> Specialized courts also introduce simplified steps if they cut some of the general civil court procedures. For example, the re-

### **Box 6.7**

#### **The creation of a specialized commercial court in Tanzania**

Tanzania's Commercial Court was established in 1999 as a specialized division of the country's High Court. It was launched at a time when the government of Tanzania had committed to embracing a market system and wanted to accelerate the process of building a legal and judicial system to support market reforms.

The Commercial Court has jurisdiction over cases involving amounts greater than Tsh10 million (about \$12,500). It has a higher fee structure than the general division of the High Court. The filing fee is about 3 percent of the amount in dispute in the Commercial Court, while in the general division fees are capped at Tsh120,000 (about \$150). The high fees discourage many litigants; these litigants use the High Court. Appeals of the Commercial Court's preliminary or interlocutory orders, a common source of delay in the Tanzanian system, are barred by rule until the case is finished.

The Commercial Court may keep filing fees until it has covered its annual operating budget. The general division must remit all fees collected to the Treasury. This means that the Commercial Court has a more stable and timely funding source. Cases filed with the court from September 1999 to November 2000 have an average value of about Tsh 52 million (\$65,000). About half involve debt recovery, a quarter involve other contract disputes, and the rest involve tort, trademark, property, company law, insurance, or tax claims. Banks and financial institutions are the heaviest users of the Commercial Court. About 80 percent of cases that go to the court are settled out of court through mediation or settlement negotiations.

*Source:* Finnegan 2001.

cently established specialized commercial court in Tanzania cut the average time to disposition from 22 months to 3 months.<sup>22</sup> The creation of the Tanzanian commercial court was the result of the combined efforts of the government, private business, and international donors (box 6.7).

*Alternative dispute resolution.* In developing countries where judicial systems are ineffective, alternative dispute resolution (ADR) mechanisms can substitute for ineffective formal legal procedures. ADR mechanisms range from informal norm-based mediation to formal arbitration courts based on a simplified legal process. These systems may be run by communities or by the state. As formal systems develop, use of formal courts increases, so proportionately more disputes are resolved in these courts. Finally, as courts become very efficient and their judgments sufficiently predictable,

the use of out-of-court settlements may increase relative to the number of court filings.

The experience on ADR mechanisms is generally positive. Many successful specialized courts and indigenous justice courts incorporate a strong element of arbitration and conciliation—including the Dutch *kort geding*, Ecuadorian labor mediation, justices of the peace in Peru, mediation centers in Latin America, Indian *lok adalats*, and the Russian *treteiskie* courts.<sup>23</sup>

The presence of alternative dispute resolution may reduce opportunities for corruption in developing economies. A judicial system in competition with other institutions is less able to extract rents from litigants. The poorest members of society and firms unaffiliated with large business groups are most likely to be affected adversely by inaccessible, corrupt, or inefficient courts. The experience with establishing a mediation facility in Bangladesh illustrates that transparent, swift, and accessible adjudication is possible with a relatively low budget (box 6.8). The evidence indicates that enforcement works best when all parties understand how the decisions are reached. The legitimacy of mediation depends in large part on incentives for agents to abide by the decisions of the forum. In most countries, this incentive is provided by societal norms, the prospect of repeat dealings, or the threat of court actions. As the Bangladeshi example shows, transparency in the mediation process is important.

The main criticism of alternative dispute resolution methods, voluntary or otherwise, is that such mechanisms generally work better when the courts are efficient. In other words, parties to a dispute have incentives to settle when they know what court judgments they will get; courts complement ADR systems. However this is clearly not the case in many developing countries, where ADR systems function as substitutes. But to function in this manner, they need to effectively represent the community for whom they adjudicate. The *lok adalats* in India, for example, are not very popular since they do not offer adequate compensation for victims, who face high costs in the courts to enforce their rights. These are more likely to be the poor people.

While few question the value of voluntary ADR mechanisms, mandatory systems have a mixed record and may have unintended consequences. This is partly due to the fact that litigants are bound by arbitration decisions. For example, they may go to the courts after mandatory arbitration. Voluntary arbitration systems may be set up by private parties or the government. In

### Box 6.8

#### Alternative dispute resolution in Bangladesh

The Maduripur Legal Aid Association (MLAA), a Bangladeshi NGO, has set up a mediation structure in rural areas to deliver dispute settlement services for women. The local MLAA mediation committees meet twice a month to hear village disputes, free of charge. More than 5,000 disputes are mediated each year, of which two-thirds are resolved. The mediation program builds on the traditional *shalish* system of community dispute resolution and is not part of the court system. The MLAA staff is composed of only 120 people, since the mediation committees are made up of volunteers. The annual budget is small: only \$80,000. The evidence suggests that a large majority of the settlements are respected because they are reached in full view of the community. Information on the process has helped strengthen legitimacy of the association. Approximately 60 percent of disputes involve family matters, 15 percent deal with property and land disputes, and the remainder mostly deal with disputes between neighbors. Plaintiffs prefer the mediation system since it is locally administered, free of charge, and relatively quick to render judgment; a decision is made within 45 days of the filing. In contrast, a court case will cost 250 taka in initial fees, and a minimum of 700 taka in lawyer's fees for a simple case. It will, on average, take three years to reach judgment.

Source: USAID 1998.

the United States, for example, the courts with the most intensive civil settlement efforts tend to have the slowest disposition times. Neither processing time nor judicial productivity is improved by extensive settlement programs.<sup>24</sup> Referring cases to mandatory arbitration has no major effect on time to disposition, lawyer work hours, or lawyer satisfaction and has an inconclusive effect on attorneys' views of fairness.<sup>25</sup> In some mediation programs—for instance in Japan and in some countries in Latin America—the mediator is also the judge. This situation may be procedurally unfair, as the judge may pressure the parties into a settlement. Parties will fear being frank before the same official who will pass judgment on them later.

*Procedural law.* Case studies also show that simplifying procedural law can increase judicial efficiency. A factor commonly associated with inefficiency in civil law countries is the predominance of written over oral procedures.<sup>26</sup> This is particularly important in Latin America.<sup>27</sup> A move toward oral procedures has produced positive results in Italy, Paraguay, and Uruguay.<sup>28</sup> In the Netherlands the *kort geding*—technically, the procedure for a preliminary injunction—has developed

informally into a type of summary proceeding on matters of substantive law. A *kort geding* rarely requires more than one oral hearing. Each party presents its case and replies immediately. The president of the court indicates the parties' chances of success in a full action, and the oral hearing often ends in settlement. On average, *kort geding* cases take six weeks. Oral procedures are a dominant characteristic of small claims courts and specialized tribunals.

Simplification of procedures tends to have a positive impact on efficiency because greater procedural complexity reduces transparency and accountability, increasing corrupt officials' ability to obtain bribes. Procedural simplification tends to decrease time and costs and increase litigant satisfaction (for instance, the streamlined procedure of British small claims courts, or justices of the peace in Peru).<sup>29</sup> The efficiency of small claims courts seems to be driven by the simplicity of procedures. Indeed, English small claims courts are not a separate institution. County court procedures have merely been modified over the years to accommodate small claims.

The overall impact of procedural simplification depends on how burdensome the procedures were previously. Reforms in clogged systems may bring about a large increase in filings in the short run but in the long run will be associated with improved service, greater litigant satisfaction, and improvements in access.

Streamlining the system by which judicial procedure itself is determined can be beneficial. If every procedural change must go through the legislature, experimentation and innovation become difficult. Powers of the legislature to determine the organization and procedural rules of courts could be partially delegated to the judiciary; such a step has proved beneficial in Uruguay.<sup>30</sup> Or the legislature could partially delegate these powers to individual courts to encourage more flexibility, as has been done in the United Kingdom, where small claims judges have the ability to adopt any procedure they believe will be just and efficient. Many procedures have been adopted because they were believed to serve fairness, protect the accused, and improve access of the poor. But the judiciary itself needs checks and balances. Such authority is best devolved to judges when there are also measures established to enhance accountability.

Not every attempt at simplification is successful, however. Design needs to be adapted to country circumstances. Hence the need for some experimentation.

As Romania's experience shows, issues such as the limit on the amount of the claim to be settled in small claims courts or the relationship between small claims courts and other parts of the judicial system can be important in determining the impact of reforms.<sup>31</sup> In October 2000 the Romanian government passed a decree aimed at reducing the caseload burden of the commercial courts and shortening delays. However, the evidence suggests that certain features of the reforms have removed an element of competition within the court system that was provided by the ability to choose in some instances between the *Judecatorii*, the small claims court for firms, and the *Tribunale*, the general-jurisdiction court. Previously, choice among courts enabled firms to avoid costly delay.

Another constraint on the ability of procedural reform to deliver greater judicial efficiency is the law itself. When the substantive rules are unclear and other institutions are weak, there may be a limit as to how much judicial efficiency can be improved through procedural reform. For instance, when most land is untitled, land tenure is insecure because no one is sure how courts will rule on a contested claim. A land-titling program, as Peru's experience shows, may increase judicial efficiency.<sup>32</sup> In the Dominican Republic substantive changes in family and commercial law—reducing gender bias in custody cases, modernizing the commercial code, and implementing more effective sanctions against debtors—were necessary conditions for successful judicial reform.<sup>33</sup> Substantive simplicity may also be behind the efficiency gains associated with the small claims court studies.

### *Increased resources*

Judicial officials and reformers have both cited the lack of resources and staff as the main factor constraining efficiency. However, the evidence on the effectiveness of increased resources is mixed. Data from the United States and from Latin American and Caribbean countries show no correlation between the overall level of resources and times to disposition.<sup>34</sup> Further, many efficiency-improving efforts include funding increases along with other initiatives, making it difficult to isolate the impact of increased resources relative to other factors. For example, in Paraguay the number of judges was increased at the same time as oral proceedings were introduced.<sup>35</sup>

The evidence indicates that funding increases help alleviate temporary backlogs in systems that have made



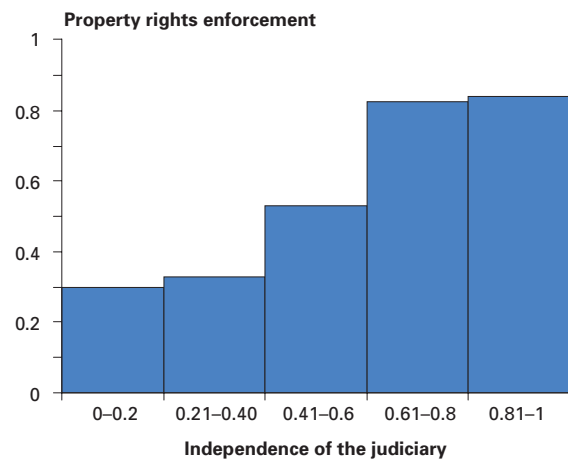
a serious effort to work better but are of little use when inefficiencies are large. Crash programs to reduce backlogs through large infusions of resources have shown good results in the short term, but without deeper change, these results cannot be sustained. Introducing computer systems or other mechanization in the judiciary, often a major component of World Bank-sponsored reform efforts, has helped reduce delays and corruption in Latin America.<sup>36</sup> Resource increases are needed to introduce computer-based systems. Much of the reduction in corruption as a result of such a reform is probably due to the increased accountability in mechanized systems. Computerized case inventories are more accurate and easier to handle than the paper-based procedures they replace, and more than one person can have access to them, which makes them harder to manipulate.

Overall resource levels are often uncorrelated with judicial efficiency, but in cases of extreme underfunding, an infusion of resources can be effective. In Uganda, for example, backlogs were caused by shortages of stationery and were solved when another court donated paper. The Supreme Court of Cambodia has acknowledged that lack of funds has made it difficult to arrange travel for trial witnesses. The Supreme Court in Mongolia has abandoned circuit work due to lack of travel money.<sup>37</sup> Resources may also help judges improve management. A major inefficiency in many judicial systems is judges' responsibility for administrative work, such as signing paychecks and ordering office supplies. Centralizing administrative work in a single office, where the employees have administrative training, increased efficiency in Colombian and Peruvian courts and in the Guatemalan public ministry.

### Fairness

Good governance requires impartial and fair legal institutions. This means guaranteeing the independence of judicial decisionmaking against political interference. A judiciary independent from both government intervention and influence by the parties in a dispute provides the single greatest institutional support for the rule of law. If the law or the courts are perceived as partisan or arbitrary in their application, the effectiveness of the judicial system in providing social order will be reduced. As discussed in previous sections, fairness also requires institutions that make judges accountable for their actions. Judicial independence needs to be coupled with a system of accountability in the judicial sys-

**Figure 6.3**  
The independence of the judiciary enhances property rights



Note: Higher values indicate better enforcement and more independence.

Source: La Porta and others, 2001, *World Development Report 2002* background paper.

tem. Civil society organizations and the media play a key role in monitoring judicial performance. The absence of checks on the judicial system can create arbitrariness.

### Guarantees of judicial independence from the state

Judicial reform that aims to improve the quality and integrity of judicial decisions is best focused on creating politically independent, difficult-to-intimidate judges. Creating a system of checks and balances also improves fairness and integrity. For this, judicial independence needs to be coupled with a system of social accountability. The channels for such accountability can be the free media and civil society organizations or can be built into the judicial system itself. These are discussed above and in chapter 10.

A study commissioned for this Report collected data from the constitutions of 71 countries, examining three factors that guarantee judicial independence: the duration of appointment of supreme and administrative court judges; the extent to which administrative review of government acts is possible; and the role of legal precedent in determining how disputes are resolved.<sup>38</sup> The same study shows how judicial independence strengthens enforcement of property rights in countries (figure 6.3).



- *Duration of appointment.* When judges have life-long tenure, they are both less susceptible to direct political pressure and less likely to have been appointed by the politicians currently in office. Independence is particularly important when judges are adjudicating disputes between citizens and the state (for example, freedom of speech issues and contract disputes). Therefore, the study focuses on the tenure of two different sets of judges: those in the highest ordinary courts (the supreme courts), and those in administrative courts, which have jurisdiction over cases where the state or a government agency is a party to litigation. Countries in which judges are independent from the influence of the state also tend to be countries where the judiciary is free from interference by private parties. The tenure of judges matters in both cases. Peru is frequently rated as the country with the least judicial independence. Former President Fujimori kept more than half of judges on temporary appointments from 1992 to 2000.
- *Administrative review.* In some countries citizens can challenge administrative acts of the government only in administrative courts, which are part of the executive branch. In other countries, citizens can seek redress against administrative acts directly through ordinary courts, or they can request the supreme court to review decisions made by administrative courts. Arbitrary government actions, including those that limit the role of the judiciary, are less likely when the judiciary can review administrative acts.
- *The role of legal precedent.* In some countries the role of courts is merely to interpret laws. In other countries courts have “lawmaking” powers because jurisprudence is a source of law. Judges have greater independence when their decisions are a source of law. Indeed, many legal scholars consider that the existence of case law as a legitimate source of law is the clearest measure of judicial independence. In some countries case law exists de facto although not de jure. For example, the French Revolution stripped all legislative power (and power over administrative acts) from the judicial system. However, judges in many civil law countries such as France and Germany do pay attention to precedent.

In 53 out of the 71 countries in the sample, supreme court judges are appointed for life. This diverse group of countries includes, for example, Argentina and Ethiopia, Iran and Indonesia. Supreme court judges are appointed for terms of more than six years, but less than life, in nine countries, including Haiti, Japan, Mexico, Panama and Switzerland. Supreme court judges are appointed for less than six years in China, Cuba, Honduras, and Vietnam. The results for the tenure of administrative court judges follow a similar pattern.

The next indicator measures the independence of courts in ruling on the disputes between the government and its citizens. There are two aspects to this measure: which courts have the ultimate power over administrative disputes, and the tenure of judges in these courts. Administrative judges adjudicate many key disputes in this area. However, whereas in 17 countries, including France and Italy, the rulings of administrative judges are final, in 50 countries, including Bangladesh, Kenya, Mozambique, the United Kingdom, and the United States, these rulings can be appealed to judges in ordinary courts. A key implication of the ability to appeal administrative sentences in ordinary courts is that, as a result, the supreme court has ultimate jurisdiction over rulings of the administrative courts.

Supreme court control over administrative cases is possible in countries of any legal origin, but it tends to happen more in common law countries. Whereas the supreme court has ultimate control over administrative cases in 90 percent of the English legal origin countries, it has final authority only in 67 percent of the countries of French and German legal origin. But the ability of the supreme court to review sentences by administrative courts is a meaningful restraint on the power of the executive only when coupled with independent, tenured judges. Administrative review is conducted by judges with lifelong tenure and subject to supreme court review in 90 percent of English origin countries and 80 percent of Scandinavian countries, but only 37.5 percent of French origin countries and 16.7 percent of German origin countries.<sup>39</sup>

Jurisprudence is a source of law in all English origin countries. However, jurisprudence is also a source of law in all Scandinavian origin countries and in 80 percent of German origin countries, including Germany, Japan, Korea, and Switzerland. French origin countries occupy an intermediate position. Jurisprudence is a source of law in 36 percent of these cases, including

in France and in many Latin American countries that modeled their constitutions after that of the United States. These differences in case law across legal origins are magnified by the tenure of supreme court judges, the judges who ultimately interpret the law. For example, not only do supreme court judges have law-making power in English and Scandinavian origin countries but they also have lifelong tenure.

The data indicate that independence of judges from the state can be built into any legal system. The main constraint is not the nature of the legal system, but rather political factors, which determine the degree of independence of the judicial system. Restraint of arbitrary state action and accountability of the state is a critical development that needs to accompany overall judicial system development. In many developing countries, judicial independence could be enhanced by giving judges lifelong tenure, by giving them lawmaking powers, and by allowing supreme court review over administrative cases.

There are several other ways to enhance judicial independence in addition to the three just listed. First, the budget of the judicial system can be set as a fixed percentage of the total government budget by law. In this way, it will not be possible to deny resources to the judiciary. In most courts, as the example of the Tanzania commercial court in box 6.7 illustrates, court fees can go toward the court budget. Only after this budget is replenished will money go toward the government budget. Second, transfers in judicial appointments can be made subject to the written approval of judges. This rule was instituted in France in 1976 and is necessary in countries like Kazakhstan, where the media recently reported cases of judges being reassigned after deciding cases against government agencies. Third, transparent criteria for career advancement are also likely to determine the degree of political independence. In most countries around the world, the executive or legislative branch decides on appointments to higher positions in the courts. This process creates opportunities for bargaining between politicians and judges in countries with high levels of corruption.

### *Intimidation by private actors*

Intimidation by powerful private interests is as likely to result in arbitrary decisions as is intervention by the state. In Colombia, for example, powerful drug lords threaten the lives of judges and their families. In the

1990s alone more than 60 judges were assassinated. One solution to the problem is the creation of “faceless” judges or juries, who decide on cases without the public knowing their true identity. This method has been successfully tried in Colombia. But even this solution may be inadequate. In a corrupt society the identity of faceless judges can be revealed.

Another channel of influence is through bribes and corruption. In a number of countries judges’ salaries are lower than those of other public servants and much lower than the salaries of private sector lawyers. This creates incentives to sell justice. While few countries can afford to pay judges \$500,000 a year and more, as is the case in Singapore, numerous countries in the last decade have introduced a pay scale consistent with the salaries of other public officials. In Uruguay, for example, higher court judges receive salaries equivalent to those of cabinet ministers. While wage increases would not eliminate high-level corruption in the judiciary, they may eradicate small-scale bribery. Judges will have less need to supplement their income. To date, however, there has been little systematic evidence on this issue.

## **Conclusions**

The judicial system plays an important role in the development of market economies. It does so in many ways: by resolving disputes between private parties, by resolving disputes between private and public parties, by providing a backdrop for the way that individuals and organizations behave outside the formal system, and by affecting the evolution of society and its norms while being affected by them. These changes bring law and order and promote the development of markets, economic growth, and poverty reduction. Judicial systems need to balance the need to provide swift and affordable—that is, accessible—resolution with fair resolution; these are the elements of judicial efficiency.

Judicial reform, like other institutional reforms, is often politically difficult. When considering institutional reform in this area, recognizing the complementarity among different institutional elements is key. Many elements affect judicial performance—for example, the institutional process for setting wages and promotions, procedural law, substantive law, the capacity of lawyers and judges, and the perceived relevance of the courts by people. Not all the elements that affect judicial performance are equally difficult politically. This is important: institutions work as systems. An im-

provement in one part can affect the efficiency of the whole system; that is, policymakers may complement various small reforms to improve efficiency while building momentum for larger reforms.

The success of judicial reforms depends on increasing the accountability of judges; that is, providing them with incentives to perform effectively, simplifying procedures, and targeting resource increases. One of the most important elements affecting judicial accountability is transparency, or the provision of information that makes it easy to monitor judicial performance and affect judges' reputations—for example, judicial databases that make cases easy to track and hard to manipulate or misplace.

Simplifying legal procedures tends to increase judicial efficiency. For example, for judicial systems that rely excessively on written procedures, a shift toward oral hearings tends to make trials simpler, faster, and cheaper, with little loss of accuracy. Reforms of this sort have improved efficiency and access in countries with diverse legal traditions. Small-claims courts and justices of the peace are widely popular because of their lay lan-

guage and pared-down procedures. Simplification is particularly important in countries where complementary institutions are weak, and other types of reforms may be more difficult in the short run. Simplified procedures may also benefit the poorer members of society and increase their access to the judicial system. Alternative dispute resolution systems—based on social norms or on simplified legal procedures—can also enhance access of the disadvantaged to legal services. Partially delegating the “nuts and bolts” of procedural reform to the judicial branch can speed the process of innovation and experimentation.

Judicial reform that aims to improve the quality and integrity of judicial decisions is best focused on creating politically independent, difficult-to-intimidate judges. Creating a system of checks and balances also improves fairness and integrity. For this, judicial independence needs to be coupled with a system of social accountability. The channels for such accountability can be the free media and civil society organizations, or accountability can be built into the judicial system itself.