

Looking at *Justice in Numbers* from a Global Perspective

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at the *Justice in Numbers 2010* Conference in
Brazilia, Brazil on August 29, 2011

A. Abstract

1. This paper outlines the World Bank's interest in the development of improved methods for measuring and evaluating the performance of courts of justice. From that perspective, it reviews the value of the methodology used to produce the *Justice in Numbers 2010* report of Brazil, including the scope of data collected from each level of Brazilian courts. Comparisons are made with court performance data published in other countries and general conclusions are drawn about the extent to which each example fosters the development of court performance measurement practices that may be applied outside the Brazilian system. Finally, this paper suggests areas in which the Brazilian statistical collections may be expanded in future, in ways that can contribute to the development of truly international standards for court performance measurement.

A. Introduction

1. It is an honour to be able to participate in this conference on Justice in Numbers for three special reasons:

2. Firstly, for some years now, the World Bank has been a keen observer and supporter of the Brazilian judiciary in its endeavours to modernize its processes and attain high standards of accountability - particularly in regard to its innovative use of information technology for improved court management. It is good to be able to attend this conference and see how Brazil's work is progressing.

3. Secondly, this conference is specifically focused on the importance of using statistics for improving the administration of justice in general, and the administration of courts in particular. There is little doubt that this is not only an important priority for Brazil and Latin America in general, but also for every court system in the world.

4. Thirdly, the World Bank has a special interest in talking about court system metrics because much its funded development activities have been specifically

concerned with helping judiciaries. This need for courts to improve themselves entails the need for courts to measure what they do and to account to their respective communities for their performance. In this connection, the World Bank has an interest in facilitating the success of the *Justice in Numbers* concept and in fostering the adoption of its successes in other regions.

A. World Bank Activity in Court System Development

1. Let me begin by elaborating a little more about what the World Bank has been doing to further the development and use of court system metrics. In recent months we have been reviewing what has been achieved by the World Bank's loan projects that have been concerned specifically with justice sector development. Since about 1994, when the Bank first started to engage in these kinds of projects, there has been a total of 36 projects approved, which amounted to some \$850 million in loan funds. Approximately a third of this expenditure went to court house construction and other forms of physical facilities improvements, including several in Latin America. The remaining funds were, in most projects, used to provide a mix of improvements through technical assistance that included such things as court automation systems, training, legal drafting, and support to change programs that were aimed at improving the capacity of courts to process cases promptly and to acceptable standards of quality. And each of those projects was, in almost every case, explicitly aimed at addressing the often simultaneous problems of limited access to justice and the effects of severe case delays in courts.

2. In addition to these 36 loan projects, the World Bank has also provided smaller scale support to court systems, either as minority components of other types of loan programs that had a broader focus, or as small grants of various kinds. These projects have numbered in their hundreds since 1994. They too have tended to address the somewhat universal challenge for courts in endeavouring to manage sometimes intractable problems of case processing delays and other barriers to access to justice.

3. The capacity to measure the efficiency and effectiveness of court system services has been an important part of the process of the Bank's project work. This is particularly so when, at the beginning of a typical court system support project, the Bank needs to draw out a baseline of knowledge about how that court system may have been performing. Similarly, the Bank will also need to obtain a contrasting end point review of a court system's performance when the project is completed, which is something that can be achieved only when there are adequate statistics available. But as probably most here would readily appreciate, in practice few court systems in the world have existing systems of statistics that might be used to construct a reliable baseline of this kind. Ironically, often one of the reasons why a court needs the Bank's assistance to begin with, will be due to the

absence of court performance statistics. And the time and effort required to establish an adequate system of metrics in a given court system that lacks one, is often so costly and time-intensive as to be impractical to achieve within the time constraints of a two or three year World Bank project. The result is that the Bank often tends to make do with baseline statistics that were limited and sometimes insufficient for useful evaluation.

4. The Bank has done considerable work in developing performance indicators of various kinds. In fact, it has a set of performance indicators that it uses in connection with its full portfolio of programs in each of its member countries. It uses, for example, a questionnaire tool, known as the World Bank's *Country Performance Indicators Assessment (CPIA)*. But the difficulty has been that the level of precision of measurement that it applies is set at relatively high levels. The result is that none of the Bank's CPIA indicators actually use data that might be produced by a court - certainly not the sorts of measures that *Justice In Numbers* uses.

5. Another notable example of the World Bank's work in this area has been the *Worldwide Governance Indicators*, which is a published set of annual data collected by the World Bank to represent factors reflecting changes in governance standards, including rule of law indicators. But this data set also does not measure what courts do, as distinct from taking surveys of opinions of court users about their perceptions of the performance of rule of law institutions.

6. The World Bank, along with other international development organizations, has always had a need for access to data that may be directly collected, compiled and validated by court institutions, along with other justice sector institutions as well. But this need has seldom been available to it. Yet that need is becoming more urgent as the World Bank continues its move in recent years towards what it calls "results-based lending". In essence, what the Bank intends doing in future is to make the evaluation of its projects more focused on giving recipient countries incentives to make projects achieve better outcomes. And this is something that can only be satisfactorily done by developing and using direct measures of the performance results of institutions that may be the beneficiary of World Bank projects, such as court institutions. Thus, as far as the World Bank is concerned, the search is on for fostering the development and use of better metrics in courts of justice; which brings me to the question of what may be special about *Justice in Numbers*.

A. The Value of Justice in Numbers Methodology

1. There are several aspects of *Justice in Numbers 2010* that distinguish it as a

report that is likely to positively influence the development of performance indicators in other countries.

2. Firstly, *Justice in Numbers* is a national compendium of court statistics, which reports on behalf of all courts of justice in the Brazilian federation. Not all federations can readily do this, least of all a federation as large as Brazil. Even the U.S.A., from which some of the most influential court system reforms have originated in recent times, there is not yet any single national report issued by its judiciary on the performance of all levels of courts. For a system as large as Brazil's, this national focus is likely to prove to be an invaluable means of measuring the potential impacts of reform programs across a vast range of courts and court localities.

3. Secondly, the *Justice in Numbers* methodology appears to have been developed with an emphasis on precision, no doubt as a result of widespread use of computerized case recording and management systems across Brazilian courts. This collection of data includes information about court expenditures, revenue and court personnel, as well as court caseloads, permitting a diverse range of calculations to be applied with minimal effort. A significant impediment to other countries in compiling similar collections of data is the widespread dependency on manual systems for collecting and collating information about court performance. *Justice in Numbers* seems to have overcome that dependency.

4. Thirdly, the information provided by *Justice in Numbers* places emphasis on measuring things that can be readily counted with respect to inputs, outputs and costs of courts; and in ways that appear to be readily audited and verified against official records. Economy of data collection is important in assuring the regularity, as well as the accuracy, of data collected.

A. Data Reported in Justice in Numbers

1. In the English language summary of *Justice in Numbers* made available for the purpose of this conference, there is set out four pages of table data that collectively represents Brazilian judicial performance in terms of numbers of cases, financial costs and revenues, numbers of judicial and other personnel. That data also relates these variables to the workloads of the different institutional courts, both 1st instance and 2nd instance. And it offers comparisons between the services courts provide and the populations they serve. The data provided is useful in accounting for inputs of the judicial system, particularly in terms of personnel and government funds used to process the caseloads of each court.

A. Scope of Data Reported

1. A present limitation on the range of data that *Justice in Numbers* contains is that it is essentially concerned with three general perspectives:

- 1 the costs and volumes of newly initiated court cases,
- 2 the volumes of cases awaiting disposition in any institutional court, and
- 3 the costs and volumes of cases that are processed.

1. Some aspects of judicial performance in Brazil are not yet captured within the *Justice in Numbers* data sets, namely:

- 1 While *Justice in Numbers* measures costs to the state, it seems clear that it does not yet measure costs to *litigants*.
- 2 While it measures volumes of cases that have been delayed, it does not yet measure the *extent of delay*.
- 3 And while it measures overall trends for cases processed by each institutional court in Brazil, it does not yet measure trends that might apply to specific *types of cases* that are processed by each institutional court, such as land disputes or family law cases.

1. But these are not so much shortcomings, as areas in which *Justice in Numbers* seems likely to be further advanced, given that few other countries have so far been able to publish a comparable amount of data to quite the same degree of detail or precision. A fair representation of the extent of its development can be shown by comparing *Justice in Numbers* to similar systems for collecting and publishing court statistics used in other parts of the world.

A. Comparable Systems of Measurement

(a) European Commission on the Efficiency of Justice

1. A comparable collection of court statistics that might be compared to *Justice in Numbers* is the series of bi-annual reports on the efficiency and quality of justice called *European Judicial Systems*, published by the European Commission for the Efficiency of Justice (known as CEPEJ).

2. CEPEJ reports, the latest of which relates to data for the year 2008, are derived from surveys of justice systems of European countries called a “scheme for

evaluating judicial systems”. Instead of extracting data from national databases of a single country, CEPEJ relies on survey responses that are normally completed by the relevant ministry of justice in each of nearly four dozen respondent countries. Although this methodology is somewhat different from that used in Brazil, it is nonetheless concerned with examining similar things. Via over 180 survey questions, the CEPEJ process extracts a much wider range of information than that attempted in Brazil. But it includes questions that overlap directly with each of the main measures that *Justice in Numbers* is concerned with. It is probably fair to say that the strengths of *Justice in Numbers* over the CEPEJ survey process is that:

- 1 *Justice in Numbers* is produced each year in tandem with fiscal cycles, whereas CEPEJ is less regular, being produced only every two years;
- 2 *Justice in Numbers* is reliant on data that is readily collated from auditable official records, whereas CEPEJ is reliant on survey results provided less directly on behalf of courts, usually via national justice ministries (with perhaps higher risks of inaccuracies or omissions in translation);
- 3 *Justice in Numbers* is concerned with a single justice system, albeit a federal judicial system, whereas CEPEJ is concerned with measuring over 40 highly diverse systems in Europe (some of which fail to provide complete survey responses).

1. The CEPEJ *European Judicial System* report series that I have described is a major initiative that is likely to serve to advance the eventual development of global standards for court performance statistical reporting. Yet its influence so far is still modest outside of Europe. And its impact not likely to be felt until national judicial systems in Europe and elsewhere begin self-reporting in the fashion outlined in its survey methodology - as Brazil has done in part.

(a) US Trial Court Performance Standards and CourTools

1. Another system to be usefully compared with *Justice in Numbers* was developed by U.S. courts in the 1990s to collect and collate performance information. It is known as the U.S. *Trial Court Performance Standards*. These standards are lengthy and somewhat complex, being intended for use only within U.S. institutional courts, and not necessarily for national publication.

2. More recently, the U.S. National Center for State Courts has produced an abbreviated version of the U.S. standards, known as *CourTools*, a product that incorporates a modest range of measures under ten broad headings. But despite its simplicity, it too was also designed essentially for domestic, rather than international application.

3. While CourTools and the Trial Court Performance Standards have been highly influential in drawing attention to the need for courts to measure essential processes, such as case clearance rates and access to justice, they have not yet proven to be readily adaptable to other countries.

(a) Australian Report on Government Services

1. Another national system of court statistical reporting to contrast with *Justice in Numbers* is a set of measures about courts in Australia that is published via an annual report known as the *Report on Government Services* (ROGS), which is a publication of the Australian federal government. In its chapter on justice, that report offers numerical data in respect of only a handful of measures, some of which are inspired by U.S. Trial Court Performance Standards and CourTools, such as the concept of measuring the age of pending caseloads. The value of this Australian example is that, like Brazil, it has a federal system of states and courts, and adopts the practice of reporting on a modest range of basic measures, each of which has some relevance as elementary measures that might be satisfactorily used in judicial systems in other regions.

(a) Other OECD Countries

1. Courts systems in most OECD countries have adopted court performance statistical systems of various kinds. Notable examples of national level systems include the United Kingdom, Singapore, Canada, the Netherlands and other systems in Western Europe. Each of them has tended to evolve incrementally and for purely local use. Few of them offer models that might be considered, even by their designers, as worthy of being considered of relevance to the development of international standards.

(a) World Bank – Doing Business Enforcement of Contracts Methodology

1. For its part, the World Bank has taken a keen interest in making use of available court statistics systems wherever they can be found. But, as I mentioned initially, the reality in almost every low income and middle income country in which the Bank has been, is that few justice systems already employ a satisfactory system of statistical data gathering in their courts. And the scope and duration of World Bank projects is often not conducive to designing and implementing enduring systems of performance measurement in any one country.

2. The World Bank has so far not developed any particular metrics product that could be said to directly measure court processes or performance. The closest it has come to developing its own metrics in this field has been via the *Doing Business* Report that it has published since 2006. *Doing Business* is an annual

survey program that measures the capacities of countries to provide services considered conducive to providing improved business and economic growth. One dimension of the *Doing Business* methodology is to survey the time it takes for commercial contracts to be litigated and enforced in courts of justice and, in that regard, the likely costs of litigation and the number of procedural steps that are typically necessary to enforce a contract.

3. While *Doing Business* consistently surveys over 138 countries each year to produce these metrics on enforcement of contracts, its methodology does not use court or government records systems, but relies instead on estimations offered by survey respondents in each country. In the case of its survey of the enforcement of contracts, the data provided is based solely on a hypothetical scenario that respondents are invited to offer their opinions on in terms of the likely time, steps and costs of enforcing a hypothetical debt. While that methodology provides a general indication of performance levels in a reasonably consistent way within each country, it cannot provide as wide or as precise a range of data as may be obtained by directly accessing official court and budgetary information in the manner of the *Justice in Numbers* methodology.

(a) The Need for Global Standards for Court Metrics

1. There is a manifest need for a tool that may be available to all justice systems across the world for measuring how courts are performing. The tool needs to be simple enough to be used in even the least developed court systems. It needs to detect performance shortfalls and to provide the means of evaluating improvements. I believe that such a tool can be developed using the experience and pioneering efforts shown in the U.S., in Europe, in Australia and now in Brazil through *Justice in Numbers*. What is now needed is a process of ongoing dialogue and collaboration between institutions with enough momentum to produce truly international standards.

A. Fostering Global Court Metrics Standards via the Global Forum

1. The World Bank hopes to foster this kind of collaboration and exchange of ideas on a global scale. It plans to achieve this, among other related objectives, by establishing an association of institutions to be known as the *Global Forum for Law and Justice Development*. The Legal Vice Presidency of the World Bank has been leading the process of developing this concept over the last few months and we are working on announcing the details of it at our annual Law, Justice and Development Week conference to be held in Washington DC from November 14 this year. In essence, this proposed Global Forum will aim at establishing a permanent platform for dialogue, collaboration and resource sharing between institutions in all regions that have an interest in expanding the global impact of

innovations in law and justice system development.

2. We envision that among the range of innovations to be on the agenda for this Global Forum will be the development of global knowledge and expertise in methods of court system metrics and evaluation. This would be done by activities aimed at securing consensus on standards for measuring and evaluating the performance of justice institutions that are considered to be most useful, reliable and adaptable to a range of different countries and regions. The scope of this work would also embrace the development of comparable metrics standards suitable for prosecutorial agencies, legal aid agencies, legal information agencies, and other institutions concerned with providing justice services.

A. Directions for Further Development

1. I believe that Brazil's contribution to the development of global standards of court performance measurement and evaluation is likely to acquire considerable momentum as a result of the *Justice in Numbers* initiative and likely further work in perfecting it. The range of measures so far developed represents a benchmark that few other countries have been able to achieve. But as the range of measures presented currently stand, there are more ways in which the scope and depth of *Justice in Numbers* can be extended so as to incorporate some of the strengths developed and used in other countries. Here are three suggested directions for further development of *Justice in Numbers*:

(i) Case age

1. Firstly, there is the need in almost every court system to measure the age of delayed court cases. So far none of the data reported in *Justice in Numbers* describes the age of cases. And yet the focus of so much social and political interest in the problems of courts in Latin America and elsewhere is concerned with court delays and the negative effects of delay. There is a need for courts statistics systems to move beyond counting the volumes of cases that are delayed, by also monitoring the extent of that delay.

2. CourTools recommends that courts calculate the age of cases that are pending, as well as the age of cases at the time they are disposed. The Australian annual statistics I mentioned earlier also measure case delay and report on performance against national standards for speedy case processing. CEPEJ reports also emphasize the importance of monitoring the age of cases as an essential element of any general system of court statistics in its member countries. By statistically presenting pending case volumes according to their age, there is a better prospect of identifying those parts of a court system that are most affected by delay; which

in turn can help in the development of the most effective strategies for reducing case delays.

(i) Disaggregation of data into case types

1. Secondly, there is a need to present court statistics from the perspective of the types of cases those courts are processing. The analysis of data in the English language version of *Justice in Numbers* breaks down cases by court institution and level of court process, i.e. by reference to whether the proceeding is at 1st instance or 2nd instance. But in the English language summary of *Justice in Numbers*, there is little information about the kinds of cases that courts find to be the most numerous or the most difficult to process.

2. There would be high value in representing data according to the type of case, rather than just the type of court that is processing them. The problem of case delay and backlogs in most courts that suffer from those problems is often due to special problems associated with certain types of cases, such as ineffective prosecutorial services affecting delays in criminal cases, or widespread disputation over land claims, or housing shortages that gives rise to greater tenancy disputes. Sometimes certain kinds of case delay problems in 1st instance courts will be magnified by correspondingly high rates of appeals to 2nd instance courts, or from local courts to national level courts, because of the type of dispute in question. These kinds of trends are often not discernable when case counts are aggregated nationally, as *Justice in Numbers* appears to do.

(i) Measuring case outcomes

1. Thirdly, an area in which few other systems are yet advanced is in the field of presenting statistics that describe the results achieved by courts when cases are disposed. Perhaps when computerized systems are sufficiently well developed that statistics can be readily produced on case outcomes, it will be possible to determine in a statistical sense how much judicial effort is required to process a typical case. What proportion of cases requires a judicial opinion to be produced? What proportion of cases are settled using alternative dispute resolution methods that reduce the workloads of judges? How many cases in a docket are dismissed without much judicial effort? If the computerized systems that produce the data for *Justice in Numbers* were able to produce these kinds of answers in relation to particular case types, it would be a powerful aid to the diagnosis of problems in court administration in Brazil, and in other court systems across the world.

A. Summary

1. So in summary, let me repeat that we in the World Bank are convinced that the *Justice in Numbers* process has taken the Brazilian judiciary in a very desirable direction for Brazilians and the broader international community. The development of better statistics about court systems is pressing, not only for the better management of court systems themselves, but also for development organizations that are concerned with strengthening the capacities of courts of justice and improving general standards of governance.

2. We believe through this conference and likely further collaborations with Brazil, other countries such as Mexico, and institutions such as CEPEJ, the agenda stimulated by *Justice in Numbers* will gain a global momentum in producing a new global good. I look forward to our discussions on this topic later today and also to the chance to meet some of you again, perhaps, at our conference in Washington DC in November.

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