ECONOMIC DEVELOPMENT & INSTITUTIONS

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THEMATIC INSIGHT

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Can information improve the functioning of courts?



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Introduction[1]

Countries where courts are weak, and rights are poorly enforced, tend to be countries with worse economic outcomes (Pande and Udry, 2006; Rodrik, 2000, 2005). To better understand the relationship between the functioning of judicial systems and economic growth, Dal Bó and Finan (2020) reviewed available evidence and constructed a framework for understanding the role of institutions in economic development. They note that despite the importance of the courts in resolving disputes, facilitating a healthy business climate, and protecting citizen rights, we have seen very little empirical evidence to show what makes courts function more fairly and quickly. Dal Bó and Finan systematically outlined open questions to encourage researchers to address these gaps. This helped launch the EDI programme as part of a Path-Finding Paper series.[2] The goal of the Economic Development and Institutions (EDI) programme, an investment generously funded by the UK's Department for International Development (DFID), is to build a body of evidence and insights into the impact of institutional changes on economic growth.

[1] This Research Recap was prepared in October 2019 by Anya Marchenko and Leah Bridle at the Center for Effective Global Action (CEGA) as part of the Economic Development and Institutions (EDI) Programme funded by UK Aid.

[2] Baland, Jean-Marie et al. The Handbook Of Economic Development And Institutions. Princeton University Press, 2020.

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In this brief, we discuss three randomized control trials supported by the Economic Development & Institutions programme since 2016.[3]

These studies help answer the following open questions posed by Dal Bó and Finan:

1. Does transparency, by heightening accountability, improve public good provision [in this case, judge and court performance]?
2. What makes information credible and usable?
3. How do career concerns affect judge incentives?
4. Beyond judges, what is the role of staff and organizational support in producing timely outcomes, and how can they be improved?
5. Would the extant results survive randomized controlled trial (RCT) study?
6. What is the impact of judicial quality on economic activity?

While much of this work is in progress, the studies we review will provide empirical evidence that helps answer Questions 1 through 5; and provide insights on Question 6.

Our lens: information

The availability and quality of information in the judiciary - the right person having the right information about a case at the right time - is critical to the functioning of courts. For example, information may inhibit justice if judges have insufficient details about a case to make a fair ruling, lack knowledge of precedent cases and sentencing guidelines, or do not get vital feedback about whether their decisions are consistent and expedient. We focus on interventions that not only make information more available, but in some cases, also target the staff and resources necessary to process that information.

From a policymaker's perspective, interventions that improve access to information could also be a particularly attractive policy lever for *practical* reasons.

- **Cost:** Compared to other types of reforms, such as paying for performance, information provision is more likely to be budget-neutral not require complicated contract renegotiation.

Spotlight on related EDI research

Can judicial reform boost democracy?

One might argue that the very same features that make information-based interventions attractive in their practicality might also make them "light-touch" in terms of impact.

Ragnar Torvik, in his EDI Path-Finding Paper, makes a case that structural change to the judiciary (which informational incentives would not provide) may be even more important than previously thought. He emphasizes that judicial reform can be a catalyst for other democratic reforms.

Torvik's framework:

Case #1: **Weak judiciary** → Citizens have less faith that the courts will punish corrupt politicians or uphold the constitution → Citizens place more power in the hands of a single strong president

Case #2: **Reformed judiciary** → Corrupt politicians held accountable → Voters respond by putting more trust in democracy and giving more power to elected officials

EDI researchers Avner Seror and Sultan Mehmood are conducting a case study on judicial independence in Pakistan that could provide empirical grounding for Torvik's framework. Using a panel data set of Pakistani judicial decisions over the last 70 years, paired with data on the political regime of the country, the authors aim to answer **how a military takeover of the government affects judges' rulings**. Specifically, do judges begin to selectively drop cases or decide on existing cases in a way that favours the military government? Or does the military regime select loyal judges to pressure their decision-making?

[3] EDI also supported the development of an "institutional diagnostics" tool applied in Bangladesh (publication forthcoming), which identifies the judiciary as a key area for reform. The goal of this tool is to develop a framework that would permit the identification of major institutional obstacles to development. However, the results of this diagnostic work in Bangladesh will not be discussed here.

- **Controversy & Corruption:** If judges simply lack information, interventions can focus on information provision without needing to move scarce resources such as money or staff, thus avoiding potential controversy. Providing information also avoids political entanglement (unlike changing electoral procedures or federal laws) and is less subject to capture by corrupt officials. However, allocating scarce resources may be necessary if the constraint is the lack of staff capacity to act on information, rather than the lack of information per se.

Governments need reform options to improve the quality of their courts. In this brief, we highlight a range of information-based reforms evaluated by EDI researchers.

1

PREDICTING CASE OUTCOMES: TO SUE OR NOT TO SUE?

Country: Mexico
Authors: Joyce Sadka, Enrique Seira, Christopher Woodruff

ISSUE: One way that better information can improve the functioning of courts is through an informed citizenry, as petitioners of judicial goods. For example, courts might be less backlogged if petitioners better understood alternatives to filing a court case, the potential costs, and the probability of winning. If petitioners knew whether their particular case is likely to win in court, they could make a more informed decision about the decision to sue, or to instead seek resolution through conciliation out of court. Sadka et al. address this question by testing two related interventions with the Mexico City Labor Court, the largest labour court in Latin America. The court is notoriously backlogged - among all cases filed in court between 2009 and 2012, 30% were still ongoing in 2016.

INTERVENTION: The authors placed a booth in front of the Mexico City Labor Court, soliciting workers who are entering the court to file a labour dispute claim. At the booth, they gave workers information about their rights after being dismissed from their job and the process of legal filings. On randomly selected days, they also provided one of two other treatments: they gave workers entering the court either 1) the probability of winning their case, using estimates from a machine learning algorithm trained on data with outcomes from similar cases[4] or 2) help setting up a conciliatory meeting with their employer.

RESULTS: Workers are overconfident in their probability of winning their case. For 31% of people, the treatment **lowered workers' expectations of winning the dispute with their employer**. Providing workers with information about their likelihood of winning their case **led to higher rates of resolution** (a settlement or being reinstated at one's job) at 2 months. Providing help to set up a meeting with the employer had an even larger effect, increasing the rate of conflict resolution by 16 percentage points. It is clear citizens in Mexico City know that they can file a labour dispute claim but know little about whether it is worthwhile to spend the time and money to do so. **Providing them with this critical information significantly changed their decision-making in ways that ease strain on individual claimants and the court system overall.**

IMPACT: This project has already had tangible and meaningful policy impact. Sadka and her team have had direct input into Mexican law, writing parts of the labour reform bill that passed in May

[4] Sadka et al. rigorously tested multiple machine learning algorithms before this study commenced to pick the best predictor. They found that they were able to predict actual case outcomes for workers with an accuracy rate of 89% (Sadka et al. 2018).

2019 using lessons learned from their research. The law was re-written to sanction abusive behaviour in labour suits, and to govern the role of public lawyers. Both changes to the law relied on major takeaways from the EDI-backed randomized controlled trial.

In addition to spurring legal change, by providing free information to workers and making the judicial process more transparent and efficient, the booth has improved the court's functioning and public image. The research team was therefore asked by the Labour Court's president to keep a permanent booth in front of the court and help the court to hire and train additional staff who will be put in charge of its operation. In addition, the government has stated they are "serious" about including the calculator information the team developed as part of its routine case management system.

Whereas these interventions in Mexico City targeted "consumers" of justice (petitioners), other court systems may try interventions targeting the performance of judges and other personnel as the "suppliers" of judicial goods. Siddiqi et al. and Harris (featured as #2 and #3, below) test such interventions in Kenya and India.

2

CAN EXISTING DATA FROM COURTS BE USED TO IMPROVE JUDGES' PERFORMANCE?

Country: Kenya, India
Authors: Bilal Siddiqi, Florence Kondylis, Matthieu Chemin, Justin Sandefur, Samuel Asher

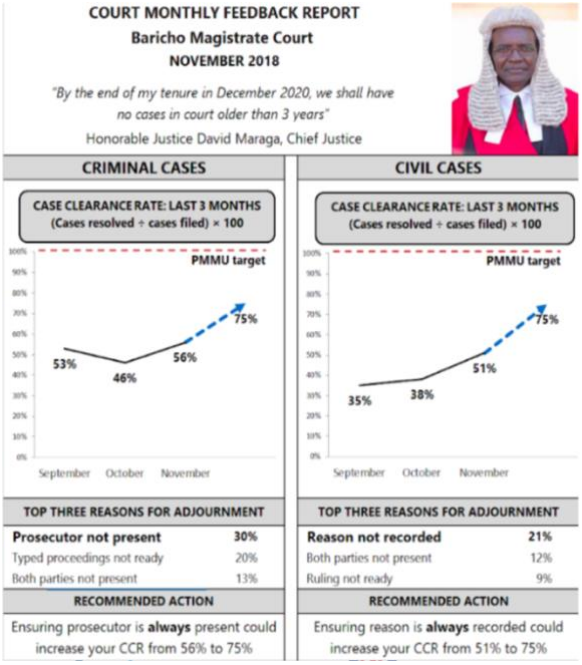
ISSUE: Recent modernization and investment in case-management software has resulted in an increase in the amount of data that courts generate. However, even modernized court systems often lack the technical expertise to analyse or use that data in a productive way, making them "data-rich, but information-poor." Siddiqi et al. are interested in whether or not they can use the wealth of data generated in these courts to motivate judges and clerks, inform their decisions, and incentivize them to work through their cases more efficiently.[5]

INTERVENTION: Siddiqi et al. test whether compiling and attractively presenting information about how well a judge performs, paired with increased accountability, can improve a judge's performance. By making information relevant to the judges' performance clearer and more accessible, researchers can test the extent to which a judge can improve their own performance. By sending this information to judges' superiors or local communities, the researchers can see whether judges change their behaviour in the face of career consequences.

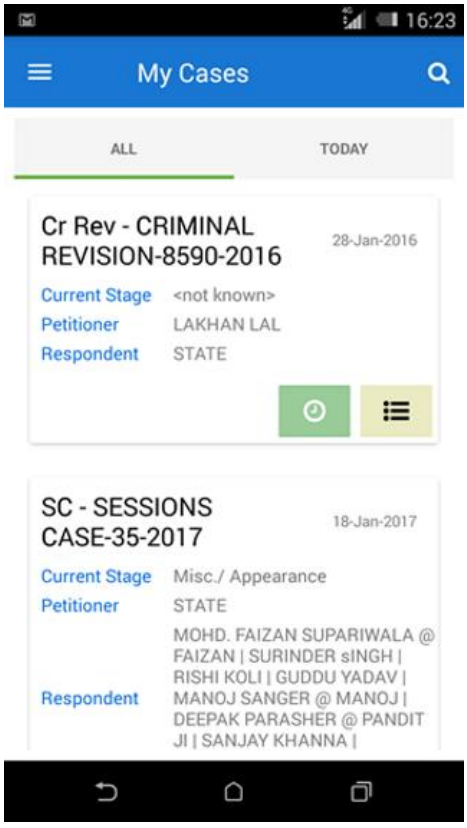
[5] Siddiqi et al. also have a third research initiative in Tanzania, where they partner with the Tanzanian Judiciary to test a performance evaluation system. They seek to target Tanzania's backlog problems, where the average business dispute takes 515 days to resolve, and courts are only able to complete two-thirds of the cases they receive every year. Reform options that may be tested include a continuing education course for staff or a mobile court operation that could increase the number of available courts in rural areas.

KENYA: Performance summary handouts

In 2015, the government decided to **tie judges' salaries to their performance** in an effort to tackle a half-million case backlog. Judges' performance is measured with data from an administrative database of cases. The researchers plan to compile this existing court data into a **one-page handout to give to judges**. The handout will detail how they are performing relative to their targets and their peers, what they should do to perform better, and how far away they are from their performance targets. By **sending the handout to a judge's superiors and members of the community**, the researchers will be able to identify whether judges respond to "top-down" or "bottom-up" accountability pressure to improve their performance.



Example of handout with performance feedback for judges that Siddiqi et al. are testing in Kenya



Court Log helps judges in India schedule every part of a case, remember which witnesses were called, and log the details of a hearing.

INDIA: Case Management App

With only **12 judges per one million people, Indian courts are currently dealing with over 33 million backlogged cases nationwide**. Siddiqi et al. are partnering with Daksh, a civil society group that developed a mobile app for judges to help them keep cases organized. The researchers plan to randomize 1,000 courts in India into experimental groups, varying the functionality and information that the app provides:

Treatment A: The researchers will show judges who use the app **where their time is being spent** and how they can better use it.

Treatment B: Performance-related information from the app's database will be sent to a supervising judge who could **reward good performance.**

Treatment C: The app will auto-suggest dates for a judge's future hearings based on a recommended daily number of hearings for each case.

Evaluating these versions of the app functionality and use allows researchers to understand what types of information could improve judge performance, and whether supervisor oversight provides important accountability pressure.

But suppose it is not actually a lack of information that is the binding constraint, but the capacity of personnel to act on that information. A key resource could be the time and skills of the clerks who support judges' work.

3

CAN ADDITIONAL STAFF HELP JUDGES PERFORM BETTER?

Country: Kenya
Authors: J. Andrew Harris

ISSUE: Harris was funded by the EDI programme to evaluate the impact of adding clerks on the timeliness and quality of judicial decisions in the context of Kenya's Magistrates courts. These Magistrates' courts deal with the majority of cases in Kenya. They have the authority to hear all criminal cases except the most serious (such as murder, treason and crimes under international criminal law), as well as most civil cases. However, Magistrates' courts in Kenya suffer from a lack of uniformity in decisions.

> "Across similar cases, manslaughter charges vary widely – from one year to life in prison; for a set of similar cases on stealing, sentences ranged from zero (a non-custodial sentence) to three years." *(Harris, forthcoming)*

INTERVENTION: Harris is implementing a randomized intervention consisting of two treatments to improve the consistency of rulings and the speed of resolving cases in magistrates' courts. In the first treatment, a courtroom observer sits in on all of the cases of a particular magistrate, to test whether outside observation improves the quality of the judicial proceedings. In the second treatment, clerks are randomly assigned to legal cases to help judges manage cases, to test whether additional administrative support is needed to improve the quality of rulings and speed up the resolution of cases.

PRELIMINARY RESULTS: Early findings from the field suggest that lack of support staff does indeed constrain judges. Judges appear to be assigning clerks to research their most difficult cases, using the newly available time to catch up on their other cases to reduce their overall caseload. However, these results are preliminary, and final results forthcoming in 2020 will more clearly show how additional personnel affects judicial outcomes.

Conclusion

These EDI-funded studies test the hypothesis that lack of quality information in the judicial system, even when courts are "data-rich", is a key constraint to development. Though results are still forthcoming for these studies, it is clear that there is room to leverage more and better information to help create well-functioning court systems.

In Mexico City, it is empirically evident that citizens did not have accurate knowledge about the way the court system functions, and this, combined with the predatory business practices of lawyers who were motivated to inflate their client base, led to a backlogged court system. **In this case, equipping petitioners of justice with more information leads to fewer cases filed, reducing burdens on petitioners and the court system.** It remains to be seen whether Siddiqi et al. and Harris will identify interventions that deploy the "right kind" of information, in the right way, to improve judges' performance.

As with any information interventions intended to increase transparency, we may learn that information, without accountability mechanisms, is not enough to motivate personnel to change their behaviour. **It is important to consider if introducing new systems that record and share how well judges, lawyers, or clerks are performing will be met with resistance**. In some contexts, corrupt and under-performing personnel who are satisfied with the status quo may feel threatened when their behaviour becomes more observable. To mitigate potential problems of corruption and lack of compliance, Dal Bó and Finan (2020) emphasize that **it is important to select and incentivize high-performing personnel, and sanction under-performing ones**. However, the leaders who have the power to introduce these accountability measures may be reluctant to do so if they are the very people at risk of being exposed by more transparency.

Finally, empirical research tends to focus on measuring impact as defined by metrics of efficiency. This not necessarily problematic, as timeliness and speed of justice, the size of the case backlog, and the uniformity of decisions are clear and natural measures of success. We hope that the next generation of research is able to measure a set of outcomes that address judicial quality more comprehensively. Better defining and measuring the quality of courts and the judiciary is a promising area for future research as we improve our understanding of how to reform judicial institutions, and how improved judicial institutions affect economic growth.

About EDI

Institutions matter for growth and inclusive development, but there is little evidence on how positive institutional change can be achieved. The Economic Development and Institutions (EDI) research programme addresses this knowledge gap by working with some of the finest economic thinkers and social scientists across the globe to inform new pathways to inclusive, sustainable economic growth.

Policy engagement is a critical focus for EDI research. We engage with policymakers and influencers throughout the design and development of our research programmes. EDI Research Insights and Policy Briefs are published at various stages of research to distil evidence and synthesise key findings for general and policy-focused audiences.

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