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Assessment of Justice System Integrity and Capacity in three Nigerian States.

Technical Research Report

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FOREWORD

Chief Justice of the Federation
Mohammad Uwais

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I. EXECUTIVE SUMMARY

A. BACKGROUND

The political instability in Nigeria, characterized by incessant military interventions in the political administration of the country, has had a profoundly negative impact on most public institutions, including the judiciary, which has suffered neglect in the past. One of the consequences of such neglect has been the pervasiveness and prevalence of corruption in the justice system. While allegations of corruption within the Nigerian Judiciary have reached alarming proportions in recent years, no reliable data has been presented on the problem. This has however not diminished the erosion of public confidence in the Justice system.

There is a general lack of efficiency and effectiveness in the Nigerian Judiciary as a whole to deal with complex and time-consuming proceedings, which are the norm in major corruption cases. The inability to deal with corruption inside the judiciary and strengthen its integrity is an integral part of the overall corruption problem. At this early stage, the main challenge faced by the Nigerian Judiciary is the absence of thorough knowledge and data regarding the extent and nature of and the reasons for the malfunctioning of the judiciary. Finally, there is a lack of a systematic, realistic, time-bound and broad-based anti-corruption action plans, both at the Federal and State levels.

The purpose of the project was to fill this gap by supporting the Nigerian Judiciary in assessing the levels, causes, locations, types and costs of corruption in the justice system as well as in planning, implementing and monitoring a sustainable reformatory process both at the Federal level and within three pilot States. The assistance provided by UNODC in this context reflects the comprehensive, integrated, evidence based and impact oriented approach generally applied by its Global Programme against Corruption.

B. ACTION LEARNING APPROACH

The Project invokes and employs 'Action Learning' principles to pass ownership for the development and implementation of activities, and responsibility for outcomes, to the host country. Sometimes reduced to the acronym CDAR (Connect/Decide/Act/Reflect), the concept is simple and uncomplicated. Applied to Nigeria, the elements were: bring stakeholders together (Integrity meetings); identify the nature and extent of the underlying problem (the Assessments); use what had been learned from the assessments to develop an intervention (Action Plans), implement three pilots, measure the impact (Evaluation), and finally, full circle – bring stakeholders back together, learn from what worked and what did not during the implementation and from the impact, and then refine the Action Plans accordingly. The principle role of UNODC was that of a facilitator.

C. COMPREHENSIVE ASSESSMENT

The main thrusts and objectives of this assessment were to have a full understanding of integrity and capacity within the justice sector. For this purpose, the study explored the country's current levels of access to justice, the timeliness and quality of justice delivery, the independence and impartiality of the judiciary as well as corruption of and public trust in the justice sector institutions. Special attention was given in this context to the reinforcing interdependencies of various problems. Cause-consequence analysis, then allowed for the identification of root-causes and the formulation of appropriate recommendations to address these shortcomings.

Key findings from the comprehensive assessment

- a) Grass roots economic development seems to be especially favoured by reform measures, which aim at enhancing access to justice, improve the quality and timeliness of justice delivery and curb corruption in the justice sector.
- b) Also, foreign capital investment could particularly benefit from: (i) enhanced access to justice and (ii) reduced levels of corruption.
- c) Court users, who have the more negative perceptions and experience when it comes to seeking access to justice, were more likely to refrain from using the courts when needed.
- d) Inefficient courts are likely to encourage citizens not to seek solutions in accordance with the law but to resort to other, often illicit means, including corruption, when seeking solutions to their legal problems.
- e) Both the perceived and experienced quality of justice delivery can be improved by reducing the importance of political connections and enhancing meritocracy when managing staff.¹
- f) Public Trust in the criminal justice system is predominantly linked to the basic security concerns of the citizens and the effective rule of law.
- g) Improving the quality justice does not necessarily require an increase of the number of court staff but rather increasing their integrity and productive.
- h) The main consequence of a low level of public trust in the courts is the declining willingness of citizens to use other courts.
- i) Lack of judicial independence is strongly linked with corruption and hampers access to justice.
- j) The perceptions of judicial independence were more positive in courts with a higher 'frequency of inspections' and 'frequency of performances evaluation in writing'.
- k) Lawyers and business people, compared to court users, are more likely to experience corruption and to perceive the courts as corrupt.
- l) The frequency of requests/offers for bribe directly depends on the overall duration of the case.
- m) Measure aimed at speeding up the trial in general and reducing the number of adjournments in particular will assist in: (i) increasing the timeliness of justice

¹ According to a previous cross national analysis of the levels of meritocracy in the public sectors, Nigeria scores lower than Cote D'Ivoire, Tunisia and Egypt and is followed only by the Dominican Republic and Kenya ("Bureaucracy and Growth: A cross-National Analysis of the Effects of "weberian" state structures on Economic Growth", Evans & Rauch, 2000).

- delivery; (ii) reduce the opportunities for corrupt practices in the courts and enhance access to justice.
- n) The more corruption the less trust, the less trust the more people accept bribery as a given fact when dealing with the justice sector institutions.
 - o) Enhanced judicial independence, will not only increase credibility, fairness and impartiality of the judiciary, but also improve the overall efficiency of the courts in handling their caseloads in a timely and efficient manner.

D. RECOMMENDED ACTION

Within the context of the UNODC project on strengthening judicial integrity and capacity in Nigeria, a large series of highly useful recommendations for judicial reform measures were collected. These included

- a) The inputs from the judges and lawyers interviewed as part of the assessment.
- b) The inputs from the UNODC sponsored International Judicial Group, originally composed of the Chief Justices and Senior Judges of Bangladesh, Karnataka (India), Nepal, Nigeria, South Africa, Sri Lanka, Tanzania and Uganda.
- c) The conclusions of the 36 Chief Judges, participating in the First Federal Integrity Meeting in Abuja 2001.
- d) The findings resulting directly from the analysis of the data collected as part of this assessment.

All these recommendation are captured in chapter V of this report.

The core recommendations that emerged directly from the analysis of the here presented data are the following:

1. Accessibility to the Courts

Key recommendations to increase accessibility to the courts:

- Reduce the number of adjournments and the total time required to resolve the case
- Streamline the legal framework and its interpretation;
- Establish and enforce clear rules for the reporting of crimes and obtaining information from the police;
- Improve public understanding/awareness raising regarding citizens' rights, especially in relation to bail processes;
- Training of police with a special focus on the relationship to the public ²;

² The current Police recruitment undergo a six to nine month training session at one of the police colleges located in each of the four geographic regions of Nigeria (north, east, west, and midwest) and Lagos. Most recruits are expected to have a high school diploma in order to be admitted into the Recruit grade of the police force. However, some recruits have first school learning certificates or a West African school certificate Police officer cadets are trained at the Nigerian Police Academy in Lagos. Some cadets are trained in England, the United States, India, and Pakistan. The length of training at the police academy ranges from one to three years, depending on the cadet's previous level of education. Persons with a university degree such as a Bachelor of Arts or Bachelor of Science spend less than three years in training before they are commissioned Assistant Superintendent. Officers of the Nigerian police force are presently recruited among university graduates. (WORLD FACTBOOK OF CRIMINAL JUSTICE SYSTEMS-NIGERIA by Obi N.I. Ebbe, State University of New York at Brockport, <http://www.ojp.usdoj.gov/bjs/pub/ascii/wfbcjnig.txt>)

- Make sure that information regarding laws and regulations are made available to all the stakeholders in the justice process;
- Strengthen Alternative Dispute Resolution (ADR) systems in order to provide for effective and timely dispute resolution able to support a modern economy;
- Increase awareness regarding Alternative Dispute Resolution (ADR) systems;
- Ethnicity and income are demonstrated to be factors reducing the access to the courts. This calls for greater compliance by all justice sector institutions with the *International Covenant on Civil and Political Rights*. In particular, any person subject to a trial needs to be informed in a language, which they understand, and be provided with an interpreter if he or she cannot understand or speak the language of the court.³

2. Timeliness and Quality of Justice Delivery

The analysis showed that the confidence in the justice system is as much influenced by its independence, impartiality and fairness as by its efficiency. Consequently, the public trust in the courts will not improve significantly unless the justice system is rendered more efficient.

Key recommendations made to improve the quality and the timeliness of justice delivery include to:

- Enhance transparency and meritocracy in the hiring, management and promotion of both judicial and court staff;
- Reduce the importance of political connections in staff treatment;
- Ensure reliable and timely enforcement of judicial decisions, in particular when linked to the basic security concerns of the citizen and the prevalence of the rule of law;
- Increase the specialisation of judges;
- Enhance training and supervision of court staff;
- Improve the functions carried out by the Police from the stage of reporting of cases to investigation and prosecution;
- Increase inter-agency coordination and cooperation across the justice system;
- Conduct regular prison audits to determine the circumstances of prisoners awaiting trial (offence, date of last appearance before the court, and current case status);
- Reduce prison congestion through a committee examining the cases identified during prison audits on their merit and recommending how cases should be treated expeditiously;

³ The International Covenant on Civil and Political Rights, signed by Nigeria the 29 October 1993, CCPR art.14 paragraph 3 states that:

(a) *All persons shall be equal before the courts and tribunals...*

(b) *To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;*

©) *To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;*

(d) *To have the free assistance of an interpreter if he cannot understand or speak the language used in court;*

- Provide more training courses for all the participants in the justice process, namely: (i) the Judges, (ii) court staff, (iii) law enforcement/prisons personnel, and most importantly, (iv) the State Counsels/Prosecutors.

3. Trust in the Justice System

Public confidence in the criminal justice system is mainly linked to the actual or perceived lack of judicial independence, corruption, delays and the weak enforcement of judicial decisions. It is therefore, that particularly those recommendations targeted at addressing these problems that will also eventually enhance public trust. Nevertheless there are also a number of measures, which should be undertaken in addition to improve the trust level of the public.

Key Recommendations to improve the public trust in the justice system include:

- Establishing Court User Committees to improve the relationship between the public and the courts;
- Managing the public trust through regular assessments of trust levels between different parts of the Criminal Justice system and the public;
- Enforcing judicial decision in a reliable and consistent manner.

4. Independence, Fairness and Impartiality of the Judiciary

In theory, the judiciary is independent, fair and impartial. However, based on the findings of this study, more reforms are required to enhance and sustain the independence of the judiciary.

The lack of independence is strongly linked to corruption. A judicial system, which is influenced by politics or by other factors is constantly undermined in its integrity and loses its ability to curb corruption. Curbing corruption requires a strong and independent judiciary.

Perceptions of judicial independence were more positive in those States where there was higher 'frequency of inspections' and 'frequency of performances evaluation in writing'. It is therefore recommended to enhance both the frequency and quality of court inspections and performance evaluations.

Key Recommendations to improve the judicial independence:

- The independence of the judiciary should be enforced through independent funding, whilst remuneration of Judges and court staff should be in accordance with the general public service provisions;
- Enforce meritocracy within the organization in order to reduce the importance of political influence and other non-merit based considerations in appointing judges;
- Secure precise rules and performance standards for career development and the hiring of the Judges;
- Increase public awareness regarding codes of conduct for justice sector staff and encourage courts users to report breaches of such codes;

- Introduce credible public complaints system and involve the court users in the review of public complaints;
- Ethics training for all staff to make them understand and respect the applicable codes of conduct and other regulations and rules for the correct, honourable and proper performance of their function.

5. Corruption within the Justice Sector

Corruption is not peculiar to the judiciary alone in Nigeria. Nonetheless, corruption in the judiciary may turn out to be more harmful because it could undermine the credibility, efficiency, productivity, trust and confidence of the public in the judiciary as the epitome of integrity.

Key Recommendations to reduce corruption in the judiciary:

- Judges must appreciate their roles first as public servants over and above their personal interests;
- Judges must also appreciate that their profession is a noble profession and its main tenets and epithets are integrity, transparency, honesty, objectivity, selflessness, and accountability;
- Increase accountability and performance of the justice sector through the enforcement of codes of conduct for all members of justice sector including:
 - (i) public awareness campaign regarding how to file a complaint,
 - (ii) ethics training for all justice sector staff,
 - (iii) credible public complaints systems and advice on disciplinary action,
 - (iv) complaints committees with court user to review the merits of complaints,
 - (v) disciplinary board to discipline staff breaching the C of C,
 - (vi) Publicize complaints received and action taken;
- Reported cases of corrupt practices must be dealt with objectively, transparently and seriously in order to send the necessary deterrence signal to would-be offenders;
- Timeliness of justice delivery must be increased and monitored;
- Procedural steps must be reviewed and reduced;
- The number of adjournments needs to be managed;
- Opportunities for fraudulent behaviour by court staff must be limited, in particular, increase the awareness of court users concerning filing fees and other court related costs in order to prevent that court staff may request fraudulently inexistent “fees”;
- More intense monitoring of “corruption-prone” case types, e.g. commercial cases;
- Businesses should be made aware how and to whom they may complain to, when asked for a bribe, and warned of the consequences in case they should bribe a court official;
- Introduce criminal liability of legal persons;
- Monitor procedural steps which are particularly “corruption-prone”, this is particularly true for the application for bail, the institution of proceedings, the issuing of summons of the defendant, interrogatories and the obtaining of certified copies of proceedings;
- Educate citizens about the duties of the police and how and to whom to complain

- to in case of the violation of these duties;
- Corruption appeared less predominant in those courts where ‘judge’s performances are evaluated in writing’ more frequently, and where ‘guidelines /policies /regulations on personnel management were formalised in writing’ regularly; this suggests that performance evaluation is an effective tool for strengthening the overall discipline, accountability and transparency in the courts;
- Performance evaluation and monitoring should also be applied to court staff;
- Police officers must account for and return all case files in their possession prior to any functional or geographical transfer.

6. Others

Apart from the above specific recommendations, a Federal Action Plan for the Judiciary should be produced and published. It should contain succinct procedures for implementation within specific time frames. And, that consideration be given to greater involvement of business as a stakeholder in the judicial reform effort.

E. BASELINE DATA

A key element to any reform is the need to develop impact oriented measures and to establish a baseline against which progress can be monitored. Generally, this will entail the development of measurable objectives, performance criteria, and impact indicators which will be repeatedly assessed, first in order to provide a baseline and later in order to measure progress made in terms of achieving the reform objectives. Of extreme importance in this context is that both the indicators forming the baseline and the eventual progress or failure thereof is dealt with in the utmost transparent way and made known to the general population.

Basic goals of anti-corruption reforms include: (i) improving access to justice; (ii) improving the quality of justice; (iii) raising the level of public confidence in the judicial process; (iv) improving efficiency and effectiveness in responding to public complaints about the judicial process and (v) improve the coordination and cooperation across the criminal justice system.

The following table provides an overview of the *status quo* in the three pilot States in the above mentioned areas of reform. For this purpose, it use baseline indices covering both, perceptions and experiences of all justice sector stakeholders including judges, lawyers, prosecutors, business people, prisoners awaiting trial and other court users, as they were collected by the present research. Each index integrates a set of questions which relate to the same reform area. All indices use a scale from zero to ten with zero corresponding to “very good” and ten corresponding to “very bad”.

Reform Objectives	Baseline Indices for Reform Objectives	Questions Composing the Baseline Indices	Baseline Indices in 2001 On a scale from 0 (= very good) to 10 (=very bad)			
			Borno	Delta	Lagos	National Average
Strengthening Access to Justice	Accessibility Perception Index (Covered by 12 questions)	Do you think your Country Justice system is Affordable? {Judges, Court Users, Business People} Do you think Distant Location of the Courts is the main obstacle to use the courts? { Judges, Court Users, Business People} Do you think expensive courts is the main obstacle to use the courts? { Judges, Court Users, Business People} Do you think expensive Lawyer Fees is the main obstacle to use the courts? {Judges, Court Users, Business People}	4.24	4.81	5.5	4.89
	Accessibility Experience Index (Covered by 3 questions)	How Many times in front of the courts, if the case is concluded? {Court Users} How Easy was the reposting process to the police ?{Court Users} In general, information on the laws and regulation affecting the firm are difficult or easy to obtain? {Business People}	4.72	4.81	5.39	4.97
Enhancing Timeliness of Justice Delivery	Timeliness Perception Index (Covered by 7 questions)	Do you think your country justice system to be quick? {Judges, Court Users, Business People} Do you think the length of the trials is the main obstacle to use the courts? { Judges, Court Users, Business People} Do you think that time requested to dispose a case is too long or appropriate? { Judges}	4.37	5.2	4.68	4.99
	Timeliness Experience Index (Covered by 5 questions)	How long did it take to solve your dispute? {Judges, Court Users, Business People} Are you aware of undue delay at any stage of the court proceeding? {Judges, Lawyers}	4.29	6.23	5.16	4.96
Enhancing Quality of Justice Delivery	Quality Perception Index (Covered by 7 questions)	Please evaluate the services provided by: Judges?, Prosecutors?, public attorneys? private attorneys? court clerks? Police? Enforcement personnel ? Prisons personnel?{Judges, Court Users, Business People} How would you evaluate the importance of meritocracy/length of service in determining how specific staff are treated, included gets hired, best remuneration, the best training opportunities? {Judges} Do you consider the Judges to be competent? {Judges, Court Users, Business People}	4.96	4.6	5.23	5.06
	Quality Experience Index (Covered by 8 questions)	Was The perpetrator of the crime arrested? if yes how long did it take? {Court Users, Business People} In general Laws, Regulation affecting your business and their Interpretations are consistent or inconsistent? {Business People} How frequent is your court inspected? {Judges} What areas do the inspection cover? {Judges} How frequently is your performance evaluated in writings? {Judges} How difficult it is to obtain information from the recordings? {Judges} In General how ineffective or effective is the record keeping at your organization? {Judges}	5.032	5.17	4.98	4.95

Reform Objectives	Baseline Indices for Reform Objectives	Questions composing the Baseline Indices as per groups of respondents	Baseline Indices in 2001 On a scale from 0 (= very good to 10 (=very bad)			
			<i>Borno</i>	<i>Delta</i>	<i>Lagos</i>	<i>National Average</i>
Improving Effectiveness, Efficiency and Credibility of Complaints System	Corruption Perception Index (Covered by 6 questions)	Do you consider your country Justice System to be Transparent? {Judges, Court Users, Business People} Do you think too high unofficial payments to judges and the courts is the main obstacle to use the courts? {Judges, Court Users, Business People}	5.33	4.44	5.04	4.95
	Corruption Experience Index (Covered by 10 questions)	Have you, or another person on your behalf made any unofficial payment in connection with this case to Judges? Lawyers? Court Staff? Police? {Court Users} Are you aware of anyone being asked to pay unofficial money to : Judges? Lawyers? Court Staff? Police? {Judges, Court Users, Lawyers} Did you receive indication to pay the police in order to investigate? {Court Users} On How many occasions have you made such payments? {Court Users, Lawyers} Would you attribute such delays to corruption? {Lawyers} Did you try to solve the dispute unofficially? {Court Users, Business People}	4.17	4.73	5.67	4.96
Enhancing Public Trust	Public Trust Index (Covered by 10 questions)	Are you confident that the Country Justice System is able to defend you from crime? {Judges, Court Users, Business People} Are you confident that the Country Justice System is able to uphold your civil rights? {Judges, Court Users, Business People} Do you think your Country Justice System effectively and efficiently supports the private sector ? {Judges, Business People} Has your firm ever had a complaint against any government agency, including, for example, the tax office, the public health service or customs? If yes did you litigate the government in front of the court? {Court Users, Business People}	5.12	4.74	5.12	5
	Independence Index (Covered by 17 questions)	Do you think Political Pressure dominates the Justice System? {Judges, Court Users, Business People, Lawyers} Do you think the Executive Branch Of the Government dominates the courts? {Judges, Court Users, Business People, Lawyers} How would you evaluate the importance of political connection/ non political connection in your organization how important are the personal connection in determining how specific staff are treated, included gets hired, best remuneration, the best training opportunities? {Judges, Court Users, Business People, Lawyers} Do you think the Judiciary works only for the rich and the powerful? {Court Users, Business People} Do you think your Country Justice to be Fair and Impartial? {Judges, Court Users, Business People}	5.07	4.78	5.53	5.19
Improving Coordination among the Criminal Justice System	No self standing index available					

II. INTRODUCTION

A. BACKGROUND/COUNTRY PROFILE

With an estimated population of 130 million (World Bank, 2003)⁴, a growth rate of 2.2% (World Bank 2003), and an average life expectancy of 46 year (World Bank 2003), about 44.1% living in the urban areas, Nigeria is the most populous country in Sub-Saharan Africa. Nigeria is a multi-ethnic, multi-religious society with more than two hundred and fifty two (252) different ethnic groups and tribes. These diversities make Nigeria one of the most complex societies in Africa with its attendant consequences for corruption, political instability, ethnic and communal clashes, among other problems⁵.

Nigeria is the largest producer/exporter of petroleum oil (a major source of foreign exchange) in Africa, and about the 6th in the world. It has an excellent climatic condition for productive agricultural activities. The country is enormously endowed with solid minerals amongst other natural resources. Yet, Nigeria is classified as one of the poorest countries in the world, ranking 148th out of 173 on the *Global Human Development Index* (UNDP, 2000). The level of poverty is high with over 70% of the population living below the income poverty line⁶. The Gross National Income (GNI) was estimated at US\$ 290 per capita in 2001 (World Bank 2003). Conversely, the adult literacy level is relatively high approximately 61.1%, yet employment opportunities are scarce. Nigeria's over dependence on oil as the highest revenue earner for government has not only stifled the prospects of other productive sectors of the economy, but has also created avenues for illicit enrichment through corrupt practices.

Politically, the country was under military dictatorship for over 29 years out of its 43 years of political independence. Under the military, the rule of law was relegated to the background and governance was subjected to draconian rules. Although the Constitution provides for separation of powers and therefore the independence of the three arms of Government, namely, the Executive, Legislature and the Judiciary, such independence has been more or less theoretical, especially under military administration. Corruption was therefore bound to grow and flourish in such circumstance.

⁴ Little Data Book, 2003, The World Bank, Washington 2003

⁵ The Ethnic issues in Nigeria has deep historical roots, and the foundation of the current Nigerian Federalism is the mirror of the ethnic differences in the country, shaped since the Nigerian Independence from the British colonial administration in the 1960's. Each of the 36 states was determined by a long subsequence of concessions (from the 60's to present) of political autonomy to significant ethnic groups with the aim of granting self-government of the main ethnic groups. The result of this historical development is a Federal State structured on Ethnic basis; each state is populated by one major group and by different ethnic minorities who are experiencing less accessibility to the courts, less impartiality and more episodes of corruption. The Nigerian constitution promotes the national integration 'whilst discrimination on the grounds of place of origin, sex, religion, status, ethnic or linguistic association or ties shall be prohibited' and it continues 'it shall be the duty of the state (a) to provide adequate facilities for and encourage free mobility of people, goods and services throughout the federation; (b) secure full residence rights for citizen in all parts of the federation'. [1999 Constitution (section 15 (2)-(3))].

⁶ This percentage live on less than US\$1 a day. There are also problems of disease, hunger, and unemployment. There is generally a sense of frustration with the deteriorating living conditions of the masses of the people leading to a loss of trust and confidence in the institutions of governance, including the Criminal Justice System.

The corruption situation has been alarming and Nigeria has been rated as one of the most corrupt countries in the world⁷. However, corruption is not unique or peculiar to Nigeria alone. Every country has its own particular types of corruption problem. The main distinction and source of worry is the magnitude, location and impact of corruption and the category of perpetrators. By far, the most deleterious and devastating effects of corruption are on the rule of law, and particularly when the efficiency and effectiveness of the criminal justice system as the epitome of integrity are undermined. Suffices to mention however that there seems to be a vicious cycle between corruption and other forms of socio-economic problems such as poverty, unemployment and crime. This vicious cycle makes it almost unrealistic to assert whether these related problems are real causes or symptoms of corruption. In Nigeria, evidence suggests that pervasive corruption is a major constraint on the efficient delivery of services, including the administration of justice.

Past studies focusing on the specificity of the Judicial Corruption have given Nigeria a middle ranking position, better than Kenya and Tanzania, but worse than Senegal, Ghana, and Botswana⁸.

A study by the US Department of State⁹ on judicial independence revealed that the Nigerian judiciary is subject to considerable influence from the executive branch, and its independence was rated lower than those of Ghana, Zambia and Namibia among others.

At the inception of the present democratic government headed by Chief Olusegun Obasanjo, corruption was and still remains one of the greatest challenges for governance. The government was quick to realize this and in his inaugural address on May 29, 1999, President Obasanjo stated categorically that the fight against corruption would be topmost on the agenda of his administration. He promised to locate and uproot corruption wherever it exists and deal with perpetrators of this unwholesome act. Government's determination and commitment were demonstrated when in less than one month in office, the President presented a Bill seeking the establishment of an anti-corruption Commission with full powers to investigate, prosecute and punish offenders. Subsequently, the Independent Corrupt Practices and Other Related Offences Commission (ICPC) was established in September 2001. The Commission was faced at the outset with litigation regarding its jurisdiction¹⁰ and the challenges of investigating and successfully prosecuting cases of corruption¹¹.

⁷ This has been the assessment of the Corruption perception Index of Transparency International (TI) since 1996

⁸ Mikael Priks, "Institutions in Corrupt Societies", November 2001- World Business Environment Survey 1997 "Measuring Conditions for Business Operation and Growth, World Bank. *"In resolving business disputes, do you believe your country's court system to be honest/ uncorrupted?"* 1=always, 6=never

⁹The World Heritage Foundation's "Index of freedom" from 2001.

¹⁰ The issue of jurisdiction was resolved by the Supreme Court in its ruling in July 2002 in favour of the Commission.

¹¹ These challenges are legion and they range from insufficient funding, lack technical expertise, to delays in the court process, usually caused by granting of frivolous orders on stay of proceedings, and other unnecessary adjournments. See Akanbi, M.M Overview of the Mandate, Mission and Procedures of the ICPC, and the Journey So Far", Paper Presented at a Workshop on Economic and Financial Crimes, organized by the Africa Diaspora Initiative (ADI) in conjunction with the faculty of Law, Ahmadu Bello University, held in Kaduna, 2-3 December, 2003.

The Government's commitment to good governance translates into a variety of policy initiatives and actions:

- a. The enactment of the Corrupt Practices and Other Related Offences Act in June 2000 and the establishment of the Independent Corrupt Practices and Other Related Offences Commission (ICPC);
- b. A number of probe panels were established, for example, the Kolade Panel to investigate and review all major contracts awarded by the previous military regimes; the Oputa Panel (similar to the South African Truth Commission) to investigate human rights abuses during the past regimes, and two other panels established to investigate the activities of the Nigeria Airways which led to the liquidation of the national carrier, among others¹².
- c. At the inception of the present democratic government, after constituting the Federal Executive Council, a retreat was organized with the assistance of TI for the new Ministers and Permanent Secretaries to sensitize the public officials on the policies and programmes of the government, and most importantly, the need for the officials to exhibit the highest possible integrity and modesty, as well as transparency and accountability by adhering strictly to the Civil Service Rules and Financial Regulations. To this end, each Minister and Permanent Secretary was required to make an under taking in the form of an 'integrity pact'. Similar retreats have been held periodically, leading to the adoption of "the Kuru Declaration"¹³.
- d. Seeking the support and cooperation of other concerned nations, the Government embarked on the recovery of assets stolen by former government officials and secreted abroad.
- e. The enactment of the Economic and Financial Crimes Act in December 2002 and the subsequent establishment of the Economic and Financial Crimes Commission (EFCC), also with full powers to enforce the law.
- f. In collaboration with the UN-*Office on Drugs and Crime*, a two year National Judicial Integrity and Capacity Building Programme was launched in 2001. The programme aims at strengthening the capacity and efficiency of the Judiciary. This report on integrity and capacity of the justice system provides both a planning and monitoring tool in this context.
- g. A policy on the monetization of benefits of public officials was introduced at the beginning of 2003¹⁴.

Regardless of the cynicism about the government's genuine commitment and the tangential achievements in this connection, the efforts by the present civilian administration to address the problem of corruption signify a good beginning, if anything, a foundation would be laid for subsequent improvements.

¹² Reports of these panels were not made public and even if they were made public, they have not been fully implemented to show a difference between these and other probe panels that were established in the past.

¹³ An elaborate retreat was held for public office holders at the National Institute for Policy and Strategic Studies (NIPSS), Kuru after which a declaration, which is like a handbook or guiding principles for transparency and accountability was adopted. It is supposedly being complied with.

¹⁴ This policy is aimed at reducing the cost of governance and has the potentials to achieve the desired results if carefully implemented. However, there is strong cynicism regarding the implementation and success of this policy. In an interview with the *Daily Trust* sometimes in September 2003, the Chairman of the National Revenue Allocation and Fiscal Commission expressed similar reservation.

Indeed, combating corruption and related social vices is a fundamental pre-requisite for institutionalizing the rule of law, maintaining public order and security, and sustaining the fledging democracy in Nigeria. It is also part of a broader objective of empowering the citizenry, strengthening law enforcement and judicial capabilities, as well as re-engineering a responsive private sector. In other words, institution building is an important component of a comprehensive, meaningful and effective anti corruption strategy.

The main pillars and objectives of the UNODC supported pilot project are to:

1. Develop, based on the findings of a comprehensive baseline assessment of the integrity and capacity of the justice system in three Nigerian States, namely Borno, Delta and Lagos State, action plans for strengthening judicial integrity and capacity.
2. Implement the action plans in nine pilot courts across the three pilot states to improve their performance regarding: (i) access to justice; (ii) timeliness and quality of the trial process; (iii) public confidence in the courts; (iv) efficiency and effectiveness in handling complaints against Judges and court staff, and (v) co-ordination across the criminal justice system institutions (Judiciary, Directorate of Public Prosecutions- DPP, Police, Prison Services and the Bar).
3. Ensure sustainability of reform measures by transferring planning, monitoring and implementation skills and processes to the judiciaries in the pilot states and closely involving key institutions, such as the Independent Anti-Corruption Commission and the Nigerian Institute of Advanced Legal Studies.
4. Identify and mainstream those measures that have proven to be successful during the pilot phase and support their implementation throughout all thirty-six states in Nigeria.

The Project invokes and employs ‘Action Learning’ principles to pass ownership for the development and implementation of activities, and responsibility for outcomes, to the host country. Sometimes reduced to the acronym CDAR (Connect/Decide/Act/Reflect), the concept is simple and uncomplicated. Applied to this Project, the elements were: bring stakeholders together (Integrity meetings); identify the nature and extent of the underlying problem (the Assessments); use what had been learned from the assessments to develop an intervention (Action Plans), implement three pilots, measure the impact (Evaluation), and finally, full circle – bring stakeholders back together, learn from what worked and what didn’t during the implementation and from the impacts, and then refine the Action Plans accordingly. Action Learning principles were also employed in the construction and activities of the Implementation and sub committees. The principle role of UNODC was that of a facilitator.

Effective monitoring and evaluation of any project is as important as the project itself. To this end, a comprehensive assessment of Judicial Integrity and Capacity in three pilot states (Borno, Delta and Lagos) was undertaken based on the fifty-seven impact indicators agreed upon during the First Federal Integrity Meeting for Chief Judges held in Abuja in October 2001.

B. OVERVIEW OF PILOT STATES

1. Lagos State

Located in the south-western part of the country, Lagos is the commercial capital of Nigeria having lost the seat of government to Abuja in 1991. Lagos is densely populated, with a population of 5,725,116 million by the 1991 census and a land-mass of 1,800 square kilometres. The state is the melting pot of all socio-cultural groups in Nigeria and foreigners although the major indigenous groups are the Aworis, Egun, Ijebu and Egbas. The predominant religions are Islam, Christianity and Traditionalists. The major economic activities of the State include commercial and industrial activities, trading, and agriculture/fishing.

The volume of litigation within the Lagos Judiciary is expectedly very high with an average of 11,000 cases filed annually. However, due to inherent problems of the judiciary, the rate of disposal of cases remains less than 50% of the cases filed annually. The court system comprises Customary Courts, Magistrate and High Courts. Appeals go from the State High Court to Court of Appeal and Supreme Court. Recent Judicial reforms by way of Specialised Divisions at the High Court level, New Civil Procedure Rules, the Multi-Door Court House etc, are designed to ease the present case load of the courts and ensure a speedier disposal of cases.

2. Delta State

Delta State is located in the South-South geo-political zone of the country. The state is within the Niger Delta where oil exploration and exploitation activities abound. The industrial and commercial activities of the state are therefore dominated by oil exploration and service companies. The population of the State is put at 2,590,491 million by the 1991 census, although, the 1996 projection put it at 2,952,928. The predominant ethnic groups are Urhobo, Iyalla, Ika (Ibo) and Isoko. The predominant religion in the state is Christianity followed by Islam and Traditionalism.

Major economic activities in the State apart from oil exploration and steel making include; palm produces, timber and plywood, rubber etc. The citizens are also well enlightened and litigation conscious. The major cases filed in the courts include civil claims for compensation of land and environmental claims. The court system comprises of Customary Courts, Magistrate Courts, Customary Court of Appeal and High Courts. Appeals from the High Court go to the Court of Appeal and Supreme Court respectively.

3. Borno State

Borno State is situated in the North East geo-political zone of the country with a population of 2,536,003 by the 1991 census, although the 1996 projection put the population at 2,927,178 million. The State is predominantly Traditional Religion/Moslem populated, with an estimate of 1,060,721 and 705,222 adherents respectively. The Sharia legal system was recently declared in the State although at time of research the enabling legislation was yet to be passed into law.

Economic activities in the State include carvings-craftsmanship, hides and skin, trans-Sahara trade and cattle rearing. Litigation in the State is mainly in the Area Sharia Courts where disputes are settled on the basis of customary and or Islamic law. The volume of litigation at the High Court level is comparatively lower than that of other pilot states as most cases are concluded in the courts of first instance i.e. Area and Sharia Courts with a low appeal rate. Appeals from the Sharia Courts go to the Sharia Court of Appeal. Appeals from the High Court proceed to the Court of Appeal and Supreme Court respectively.

C. ASSESSMENT OF JUDICIAL INTEGRITY AND CAPACITY

Understanding a problem in its proper context is an important step in finding solution to it. Whereas in the past, a few empirical studies have been carried out on the justice system in general and the problem of corruption in particular, there is insufficient concrete data on the specific nature, extent and locations of corruption that would guide meaningful policy formulation and enforcement¹⁵. One of the main objectives of the Judicial Integrity and Capacity Project therefore was to bridge this gap by conducting an assessment to determine the current status of integrity and capacity in the justice system in three pilot states.

1. Objectives

The main thrusts and objectives of this assessment were to have a full understanding of the levels of integrity and capacity of the various justice sector institutions in the three pilot States. More specifically, the study assessed:

- Access to justice
- Timeliness of justice delivery
- Quality of justice delivery
- Independence, impartiality and fairness of the judiciary
- Public's trust in the judiciary
- Corruption within the justice sector.

It furthermore explored the institutional and legal anti-corruption framework and conducted a case audit focusing in particular on the potential abuse of procedural or substantive discretion.

¹⁵ Previous studies on corruption in Nigeria include Odekunle, Femi (1982) (ed) *Nigeria: Corruption in Development*, University of Ibadan Press, Ibadan, et.al. (2001) (eds) *Corruption and Organized Crime: The Challenges in the New Millennium*, Spectrum Books: Abuja. On Law and Order, the most empirical study till date is the *Report of A Special Study Group on Law and Order*, The Presidency, 1985, Federal Government Printers, Lagos. Mention should also be made that the NIALS had earlier published a *Technical Report on the Nigerian Court Procedures Project* (2001) containing Proposals for the Reform of the High Court of Lagos State Civil Procedure Rules.

2. Methodology

The methodology for the research included; a desk review of existing literature on the justice system; a desk review of laws relating to corruption as well as a case analysis of judgments/rulings on bail applications for drug related cases and land matters in Lagos; armed robbery and land matters in Delta; and theft and land cases in Borno state. The centerpiece of the study consisted of the survey of judges, lawyers, prosecutors, court users, businesses, prisoners awaiting trial and court staff.

The Research was based on the guidelines approved at the First Federal Integrity Meeting held from 26th 27th October, 2001 at Abuja, where it was resolved that the following impact indicators be measured in the pilot states in order to assess the level of Judicial integrity and capacity of the pilot states.

These were namely;

1. Access to Justice;
2. Quality and Timeliness of Justice Delivery;
3. Public Confidence in the Justice System; and
4. Effectiveness in dealing with complaints.

The research team, through the field workers adopted a one-on-one interview process using prepared surveys/questionnaires on the following segment/groups;

1. Judges;
2. Lawyers/Prosecutors/Defenders;
3. Court Users;
4. Business People;
5. Serving Court Staff;
6. Retired Court Staff;
7. Prisoners Awaiting Trial.

The sampling took cognizance of the diverse characteristics of the pilot states, the peculiarities of the legal environment, variety and density of courts, Lawyers and court users in the pilot states.

A combination of multi-stage stratification and simple random sampling was used to ensure that equal chance/opportunity was given to every segment of the sample frame and that each category or social group was represented in proportion to the size of the group in the universe as a whole.

To ensure that the sample technique is representative of the different Judicial Divisions and Magisterial Districts in the three pilot states, a given number of places/courts in each State were chosen for the purpose of sampling.

To achieve maximum results, semi-structured, and in some cases, both open-ended and closed-ended questionnaires were administered by trained research assistants.

3. Characteristics of the sample groups/segments

The population of the various groups sampled in the 3 pilot states is as shown below:

NO	GROUPS	LAGOS STATE	DELTA STATE	BORNO STATE
1.	Judges: High Court Magistrate Court Customary Court of Appeal/Sharia Court of Appeal Area Customary Court/Upper Area Courts District Customary Court/Area Courts	54 99 - - 230	28 64 3 80 154	15 27 3 22 54
2.	Lawyers	1500	500	150
3.	Court Users	11000	1200	1000
4.	Sub Total	12883	2029	2081

Total (12883 + 1982 + 2081) = 16,993

Notes:

About 11,000 cases are filed annually in Lagos State though not all of them proceed to trial.

Lagos State has 4 Judicial Divisions and 7 Magisterial Districts

Lagos State does not have Customary Court of Appeal

There are vacancies for 4 more Judges of Customary Court of Appeal in Delta State

The Area Customary Courts in Delta State are presided over by Legal Practitioners with 2 other lay members.

The District Customary Courts in Delta State are presided over by lay Judges.

Area Courts in Borno State are divided into Area and Upper Area Courts.

With effect from December 20, 2001, 15 of the Area Court Judges in Borno State were converted to Sharia Court Judges.

The total size of the universe for the research is 16,993. The projection was to survey 30% of the universe of the research, which totalled 5,097.9. This target figure was however surpassed by the Research Team due to the adoption of a more robust sampling technique. The sample size achieved during the research was 5,766: This is distributed as follows:-

NO	SURVEY GROUPS	LAGOS	DELTA	BORNO	SURVEY SAMPLE TOTAL
1	Court Users	561	541	573	1675
2	Judges	43	40	31	114
3	Lawyers/Prosecutors	395	109	44	548
4	Business People	156	80	43	279
5	Prisoners Awaiting trial	1206	591	353	2150
6	Serving Court Staff	561	268	154	983
7	Retired Court Staff	0	6	11	17
	State/General Total	2922	1635	1209	5766

The data gathered from the field was examined by NIALS for completeness, consistency and accuracy of responses. It revealed some instances of poor appreciation of the questions by the respondents. However these were clearly in a negligible number. The data was thereafter entered on Microsoft Excel files as first stage of analysis. The second stage of the data evaluation and analysis was carried out by the Global Programme against Corruption within the United Nations Office on Drugs and Crime. This phase consisted of the categorization of the data in 3 main parts:

- a. ***A descriptive part***, which collates the evidence of interviewees: the data was aggregated into six categories in accordance with the indicators determined by the First Federal Integrity Meeting, namely access to justice, quality and timeliness of justice delivery, corruption and public trust in the justice system institutions and independence and impartiality of the judiciary. This includes both, a comparison across States and across categories of respondents.
- b. ***The Data Analysis*** comprises the formulation of assumptions/hypotheses of cause-consequence relations concerning the findings of the descriptive part. Through the creation of indexes¹⁶ of corruption, accessibility, timeliness, quality, public trust, independence, fairness and impartiality of the courts and the use of statistical parametric and non-parametric techniques, it was possible to identify the existence and the magnitude of the relations between those variables. For the purpose of this analysis, the single indicators for each of the six areas of judicial reform are being integrated into perception and experience indices for accessibility, timeliness and quality of justice delivery, as well as judicial independence, fairness or impartiality and corruption of and public trust in the justice system.¹⁷ Based on the results found, the hypotheses/major assumptions have been compared and verified by applying mainstream statistical and criminological theories.
- c. ***Policy Recommendations*** were extracted from the inputs provided by the judges and lawyers interviewed as part of the assessment, the UNODC sponsored International Judicial Group composed of the Chief Justices and Senior Judges of Bangladesh, Karnataka (India), Nepal, Nigeria, South Africa, Sri Lanka, Tanzania and Uganda, the conclusions of the First Federal Integrity Meeting for Chief Judges, held in Abuja 2001, and the findings resulting directly from the analysis of the data collected as part of this assessment.

5. Limitations

It should be noted that although Nigeria is a common law country, strictly speaking, it operates a structural mix of Common Law, Sharia Law and Customary Law. This diversity was clearly understood at the outset during the selection of the pilot states, with

¹⁶ The Indexes were compiled as an average of selected variables, each converted in a scale from 1 to 10, as a consequence the indexes are in a scale from one to ten. It was decided to give a negative to the score in the indexes, hence the higher the score in the corruption experience index, the higher the level of corruption experienced by that person, the higher the score in the Accessibility Perception Index, the lower is the court accessibility according to that respondent perception, and so forth.

¹⁷ Both, experiences and perceptions are highly relevant for the purpose of gaining a more profound insight into the levels as well as the cause-consequence relations between the various aspects of justice delivery. Perceptions could be influenced by various factors, many not related to the actual prevalence of shortcomings in the respective areas. E.g. the perception of corrupt practices in the justice system may in some cases be caused by delays, incompetence as well as a general feeling that all public servants are corrupt. Such findings naturally would also be of great importance for the formulation of policy recommendations. On the other hand, actual experiences may not always be truthfully reported. In particular, in the case of corruption, respondents may not feel comfortable admitting openly, that they have bribed a judge or a court staff or they may be reluctant to badmouth their own institution or profession by indicating corruption among colleagues, that they are aware of.

Borno state as the only state where Sharia is fully operational among the three states. It is therefore not unusual that such a study would encounter some constraints and relative differences. Thus, the report of the experiences of field workers in the course of the research revealed the following:

1. Judges and Lawyers were particularly difficult to interview, one-on-one, on account of their busy schedules. They generally preferred the survey instruments to be left for them to attend to at their own time.
2. Court Users were not easily accessible to fieldworkers as some demanded money before answering questions; some were screened away by their Lawyers while others expressed apathy in the research, contending that previous efforts were yet to bring about the expected benefits.
3. The survey instruments contained many questions some of which needed explanations for rational answers to be given to them. Thus, those who could not be interviewed face to face could not benefit from the explanations of fieldworkers and consequently a few of the respondents misunderstood the purport of the questions.
4. Awaiting trial persons were generally apprehensive in answering questions relating to corruption in the Justice System especially with respect to the Police, Prison Officials and Judges for fear of repercussions. The problem was compounded as most of them had to be interviewed in the presence of Prison Officials. There was a general feeling that they had been instructed not to make disparaging remarks about the system.
5. Serving Court Staff were also not generally forthcoming on the issue of corruption and discipline within the Judiciary for fear of repercussions.
6. Retired Court Staff who would have been able to throw light on the state of the Judiciary during their service were generally difficult to access as many had left for their respective villages soon after retirement. It was therefore not surprising that the fieldworkers could not interview any one in this category in Lagos State.
7. On the issue of corruption within the Judiciary, Lawyers and Business People were more forthcoming on their experiences of corrupt practices within the Judicial System and who should be blamed for the corruption.

III. BASE LINE DATA

A key element to any reform is the need to develop impact oriented measures and to establish a baseline against which progress can be monitored. Generally, this will entail the development of measurable objectives, performance criteria, and impact indicators which will be repeatedly assessed, first in order to provide a baseline and later in order to measure progress made in terms of achieving the reform objectives. Of extreme importance in this context is that both the indicators forming the baseline and the eventual progress or failure thereof is dealt with in the utmost transparent way and made known to the general population.

A baseline will make reformers accountable to the public as the ultimate beneficiary of any reform. It provides a tool for all stakeholders to evaluate the actual impact of reform measures and exercise pressure on those who fail to achieve the promised results. At the same time impact-oriented progress review enables reformers to assess the validity of their actions, and refine or readjust their plans for the future.

The First Federal Integrity Meeting for Chief Judges in Abuja in 2001 decided that the judicial reform effort in Nigeria should focus on: (i) improving access to justice; (ii) enhancing quality and timeliness of justice delivery; (iii) raising public confidence in the judicial process; (iv) improving efficiency and effectiveness in responding to public complaints, and (v) strengthening coordination and cooperation across the criminal justice system.¹⁸ For each of the measures a set of indicators was identified which according to the participating judges would allow establishing if the measure had achieved its goal. This list became the immediate basis for the refinement of the comprehensive assessment methodology. In particular the survey instruments for judges, lawyers and prosecutors, court users, court staff, both present and retired as well as businesses were reviewed with an particular focus of covering all the mentioned impact indicators. By linking each single measure directly to a set of indicators it becomes possible to establish individual baselines; a necessary precondition for any truly meaningful monitoring exercise. The impact oriented design of the assessment will allow the fine-tuning and adjustment of each single measure and hereby greatly contribute to the achievement of the overall objectives of the project.

The following table provides an overview of the *status quo* in the three pilot States in the above mentioned areas of reform. For this purpose, it use baseline indices covering both, perceptions and experiences of all justice sector stakeholders including judges, lawyers, prosecutors, business people, prisoners awaiting trial and other court users, as they were collected by the present research. Each index integrates a set of questions which relate to the same reform area. All indices use a scale from zero to ten with zero corresponding to “very good” and ten corresponding to “very bad”.

¹⁸ This last objective was added by the First State Integrity Meeting for the Lagos State Judiciary and confirmed by the similar meetings held in Borno, Delta and Katsina.

Reform Objectives	Baseline Indices for Reform Objectives	Questions Composing the Baseline Indices	Baseline Indices in 2001 On a scale from 0 (= very good) to 10 (=very bad)			
			Borno	Delta	Lagos	National Average
Strengthening Access to Justice	Accessibility Perception Index (Covered by 12 questions)	Do you think your Country Justice system is Affordable? {Judges, Court Users, Business People} Do you think Distant Location of the Courts is the main obstacle to use the courts? { Judges, Court Users, Business People} Do you think expensive courts is the main obstacle to use the courts? { Judges, Court Users, Business People} Do you think expensive Lawyer Fees is the main obstacle to use the courts? {Judges, Court Users, Business People}	4.24	4.81	5.5	4.89
	Accessibility Experience Index (Covered by 3 questions)	How Many times in front of the courts, if the case is concluded? {Court Users} How Easy was the reposting process to the police ?{Court Users} In general, information on the laws and regulation affecting the firm are difficult or easy to obtain? {Business People}	4.72	4.81	5.39	4.97
Enhancing Timeliness of Justice Delivery	Timeliness Perception Index (Covered by 7 questions)	Do you think your country justice system to be quick? {Judges, Court Users, Business People} Do you think the length of the trials is the main obstacle to use the courts? { Judges, Court Users, Business People} Do you think that time requested to dispose a case is too long or appropriate? { Judges}	4.37	5.2	4.68	4.99
	Timeliness Experience Index (Covered by 5 questions)	How long did it take to solve your dispute? {Judges, Court Users, Business People} Are you aware of undue delay at any stage of the court proceeding? {Judges, Lawyers}	4.29	6.23	5.16	4.96
Enhancing Quality of Justice Delivery	Quality Perception Index (Covered by 7 questions)	Please evaluate the services provided by: Judges?, Prosecutors?, public attorneys? private attorneys? court clerks? Police? Enforcement personnel ? Prisons personnel?{Judges, Court Users, Business People} How would you evaluate the importance of meritocracy/length of service in determining how specific staff are treated, included gets hired, best remuneration, the best training opportunities? {Judges} Do you consider the Judges to be competent? {Judges, Court Users, Business People}	4.96	4.6	5.23	5.06
	Quality Experience Index (Covered by 8 questions)	Was The perpetrator of the crime arrested? if yes how long did it take? {Court Users, Business People} In general Laws, Regulation affecting your business and their Interpretations are consistent or inconsistent? {Business People} How frequent is your court inspected? {Judges} What areas do the inspection cover? {Judges} How frequently is your performance evaluated in writings? {Judges} How difficult it is to obtain information from the recordings? {Judges} In General how ineffective or effective is the record keeping at your organization? {Judges}	5.032	5.17	4.98	4.95

Reform Objectives	Baseline Indices for Reform Objectives	Questions composing the Baseline Indices as per groups of respondents	Baseline Indices in 2001 On a scale from 0 (= very good to 10 (=very bad)			
			<i>Borno</i>	<i>Delta</i>	<i>Lagos</i>	<i>National Average</i>
Improving Effectiveness, Efficiency and Credibility of Complaints System	Corruption Perception Index (Covered by 6 questions)	Do you consider your country Justice System to be Transparent? {Judges, Court Users, Business People} Do you think too high unofficial payments to judges and the courts is the main obstacle to use the courts? {Judges, Court Users, Business People}	5.33	4.44	5.04	4.95
	Corruption Experience Index (Covered by 10 questions)	Have you, or another person on your behalf made any unofficial payment in connection with this case to Judges? Lawyers? Court Staff? Police? {Court Users} Are you aware of anyone being asked to pay unofficial money to : Judges? Lawyers? Court Staff? Police? {Judges, Court Users, Lawyers} Did you receive indication to pay the police in order to investigate? {Court Users} On How many occasions have you made such payments? {Court Users, Lawyers} Would you attribute such delays to corruption? {Lawyers} Did you try to solve the dispute unofficially? {Court Users, Business People}	4.17	4.73	5.67	4.96
Enhancing Public Trust	Public Trust Index (Covered by 10 questions)	Are you confident that the Country Justice System is able to defend you from crime? {Judges, Court Users, Business People} Are you confident that the Country Justice System is able to uphold your civil rights? {Judges, Court Users, Business People} Do you think your Country Justice System effectively and efficiently supports the private sector ? {Judges, Business People} Has your firm ever had a complaint against any government agency, including, for example, the tax office, the public health service or customs? If yes did you litigate the government in front of the court? {Court Users, Business People}	5.12	4.74	5.12	5
	Independence Index (Covered by 17 questions)	Do you think Political Pressure dominates the Justice System? {Judges, Court Users, Business People, Lawyers} Do you think the Executive Branch Of the Government dominates the courts? {Judges, Court Users, Business People, Lawyers} How would you evaluate the importance of political connection/ non political connection in your organization how important are the personal connection in determining how specific staff are treated, included gets hired, best remuneration, the best training opportunities? {Judges, Court Users, Business People, Lawyers} Do you think the Judiciary works only for the rich and the powerful? {Court Users, Business People} Do you think your Country Justice to be Fair and Impartial? {Judges, Court Users, Business People}	5.07	4.78	5.53	5.19
Improving Coordination among the Criminal Justice System	No self standing index available					

IV. DATA ANALYSIS

A. INTRODUCTION

In the following, the report tries to establish the relative weight of the factors, identified in the descriptive part in terms of their potential to hamper the functioning of the justice system in the three States, as well as exploring the cause-consequence relations of the single factors. The objective of this analysis is to identify policy options and facilitate decision making when it comes to determining priority measures for judicial reform. For the purpose of this analysis, the single indicators are being integrated into perception and experience indices for accessibility, judicial independence, timeliness and quality of justice delivery, as well as corruption of and public trust in the justice system.

The analysis revealed that perceptions and experiences were interrelated, in most cases, indicating that opinions concerning the justice system are normally based on actual experiences or first hand knowledge of such experiences. It also became evident, that the final resolution of the case/judgement does not seem to influence the perceptions of respondents. Only with regard to judicial independence, perceptions varied significantly according to whether the respondent had won or lost the case.

Significant differences were found regarding the experiences and perceptions of respondents with different socio-economic and demographic characteristics. In particular the less privileged, both in terms of monetary means and educational background as well as the ethnic minorities tended to have worse experiences and perceptions on the justice system. At the same time gender did not seem to influence the experiences in the justice system, even though the majority of the respondents were male, so this finding should be evaluated with caution.

In particular, the poor and ethnic minorities encountered significant obstacles in accessing justice¹⁹. This is especially the case in Delta State. Other factors, such as education and gender were not directly related to accessibility. Further, the poor and uneducated were more likely to experience delays in justice delivery. To a lesser degree, this seems also to be true for ethnic minorities, while the gender of the respondents did not influence their experiences or perceptions of the timeliness of justice delivery. The socio-economic and demographic characteristics of the respondents in no small way also affected their perceptions and experiences of the quality of the courts. In particular women, the poor as well as ethnic minorities experienced and perceived a lower quality of justice delivery. Moreover, it turned out that ethnic minorities as well as the poor tended to have less trust in judiciary. As far as the perception of judicial independence is concerned, again the less privileged, both in monetary and educational terms, were more likely to perceive the judiciary as biased. Also, the poor as well as ethnic minorities seem more likely to suffer from corruption. While this could be observed in all three States, it was particularly evident in Delta State. Gender on the other hand does not appear to be significantly related to the levels of experienced or perceived corruption.

Focusing on the private sector, it was also possible to identify some significant differences regarding the company size, business sector as well as capital investment. In particular, it was verified that small capital companies have greater difficulties in accessing the courts, when

¹⁹ The 'Ethnic Majority' variable has been calculated by considering the ethnic structure in each single state for each sample. The value every respondent has in this variable is the percentage that his/her ethno has in his state in his/her sample.

compared to larger ones, and they tend to experience worse services from the courts. The companies' size seems also to influence its likelihood to be confronted with corruption in the courts. Findings from Lagos State evidence that the smaller the company, the more likely it is to perceive the judicial system as corrupt and, as a consequence, shows a lower trust level.

FINDING 1

Grass roots economic development seems to be especially favoured by reform measures which aim at enhancing access to justice, improve the quality and timeliness of justice delivery, and curb corruption in the justice sector.

Furthermore, it emerged that companies with foreign capital investment generally perceive the country's justice system less accessible than domestic businesses, and they are also by far more likely to experience corruption in the courts.

FINDING 2

Foreign capital investment could particularly benefit from: (i) enhanced access to justice, and (ii) reduced levels of corruption.

When differentiating according to business sector, commerce emerged as the sector most vulnerable to corruption, followed by the mining, quarrying, agricultural and financial sectors. As far as the case-type is concerned, cases related to constructions were most corruption prone, followed by labour-related cases and then, tort-related cases.

B. ANALYSIS

1. Access to Justice

The *Accessibility Experience Index* was construed drawing from all those questions relating to the experiences in particular of court users and business people when seeking access to justice.²⁰ Such factors 'the number of times respondents had been asked to come to court before the case was concluded'²¹ and 'how difficult was to report a crime or to find information on the court case they are involved in'²².

In addition, an *Accessibility Perception Index* has been created. This is of particular relevance, since the decision of seeking access to the court system, often will be determined by the perception of the accessibility rather than by prior experience. The *Accessibility Perception Index* is composed of questions relating to perceptions of the general affordability²³ of the justice

²⁰ The cost of bureaucracy in general in Nigeria is one of the highest in the world, i.e. the cost of obtaining legal status to operate a firm as a share of per capita GDP in 1999, including all identifiable official expenses (fees, costs of procedures and forms, photocopies, fiscal stamps, legal and notary changes, etc.), is 257 against the 120 of Senegal, 60 of Zambia and 21 of Ghana (Red Tape Ranking, Djankov, La Porta, Lopez-de-Silanes, and Shleifer, 2001).

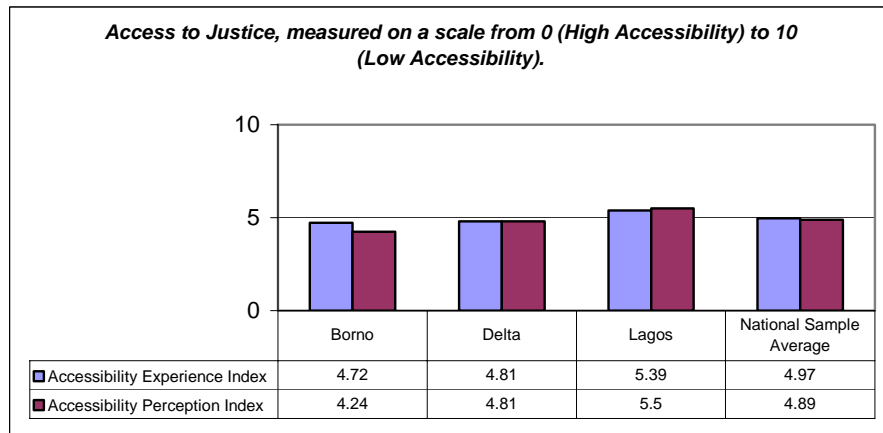
²¹ Question CU6c for court users

²² Question CU4.2biii for court users, andBz2.1 for businessmen

²³ Question CU1.1c for court users, Bz1.1c for businessmen, Jd2.1c for Judges

system, the complexity of the procedures and whether the costs in terms of court or lawyer fees too expensive²⁴.

In a cross State comparison it turned out, that in Lagos it is more difficult to seek access to justice institutions, while Borno and Delta scored better, both in terms of experienced and perceived accessibility.



Comparing the single components, of the two indices, it could be verified that the overall experience with accessibility is most negatively influenced by ‘the difficulties to report to the police and to find information on the laws and regulations’ and ‘the consistencies of laws and regulations and their interpretation’. This suggests that by streamlining the legal framework and its interpretation as well as by establishing and enforcing clear rules for the reporting crimes to and obtaining information from the police, the legislature could improve the overall accessibility of the justice system.

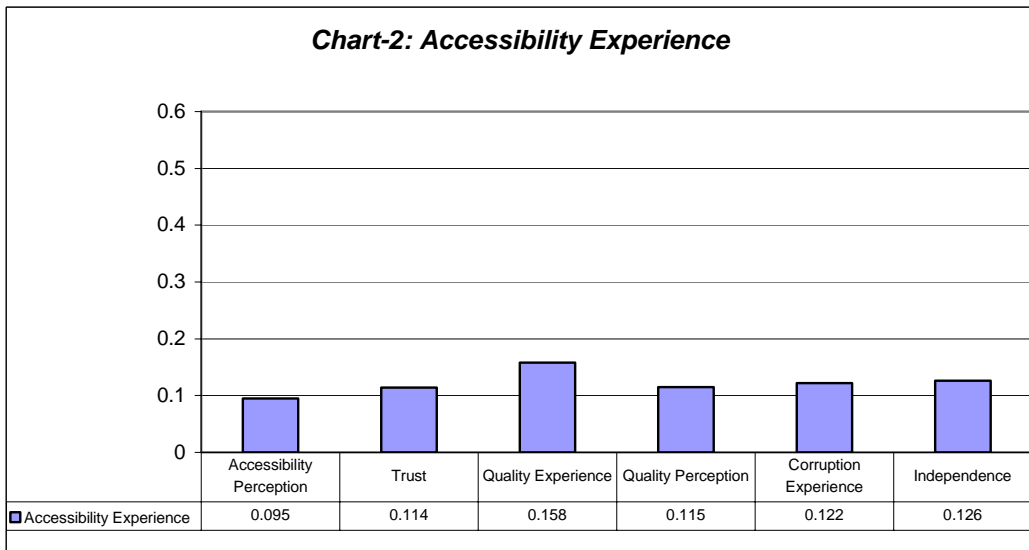
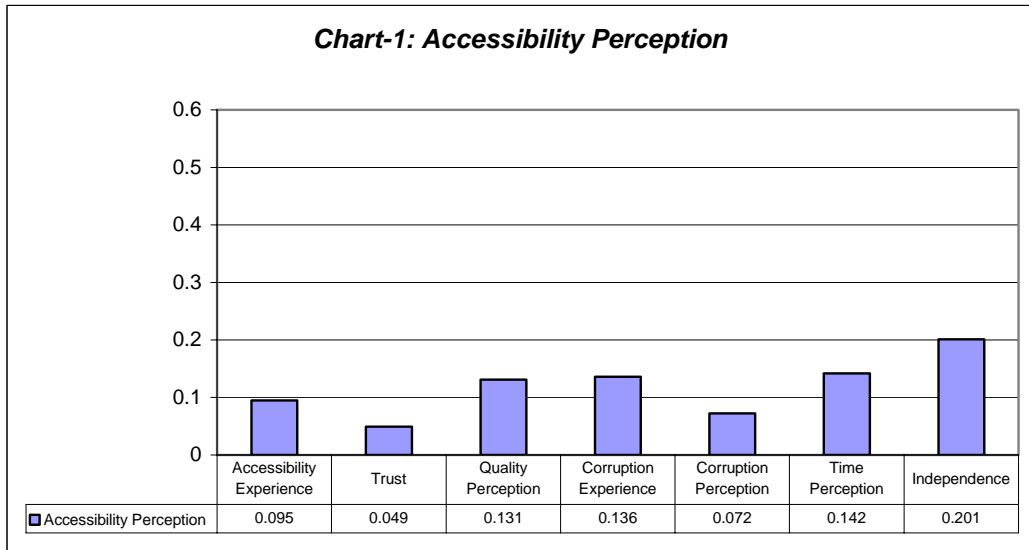
FINDING 3

Streamlining the legal framework and its interpretation as well as by establishing and enforcing clear rules for the reporting crimes to and obtaining information from the police, will improve the overall accessibility of the justice system.

In order to establish cause-consequence linkages both indices, the *Accessibility Experience Index* and the *Accessibility Perception Index* were correlated with the indices for quality and timeliness, independence, public trust and corruption.²⁵ The following charts show the intensity of these relations. The below charts show the strongest link between the perception of accessibility and independence (*Chart 1*), while the experiences of accessibility are mainly interrelated with the experienced quality of justice delivery (*Chart 2*).

²⁴ Question CU5.1a for Court users, Biz4.1a for businessmen, Jud2.7 for Judges

²⁵ The strength of the relation between the two phenomena is calculated using the Pearson correlation coefficients



When further exploring these links, the following findings emerged. The most negative perception of the accessibility of the justice system was shared by those court users who had to come to court more often in order to resolve their cases.²⁶ Only in Borno State court- and lawyer fees were considered equally detrimental to the accessibility of the justice system. This finding suggests that difficulties in accessing the justice system stem rather from the inefficiencies of the system than from court or lawyer fees. This was further confirmed by the fact that Borno State, regardless of its court fees being perceived as too high, was found to provide the best access to justice, when compared to Lagos and Delta.

FINDING 4

²⁶ While there was an obvious link between the number of hearings that respondents had to attend in order to resolve their cases and their perception of the accessibility of the justice system, no significant relation was established between accessibility and the length of trial as such.

Access to justice could be significantly enhanced by reducing the number of adjournments and by the time required to resolve the case, while the reduction of the court fees is unlikely to have a similar impact.

This lack of accessibility to the courts inevitably affects the trust and confidence of the people in the ability of the judiciary to fully assume its rightful institutional role as an embodiment of integrity and justice. Both, the perception and experience indices were correlated to the *Public Trust Index*. For court users, the more often they had to return to the court with regard to the same case, and the more difficulties they experienced when reporting to the police, all meant less trust to them in the ability of the justice system to curb crime or defend their rights. The main consequence of the lack of access to justice is that court users and business people prefer to use other, not always licit, ways to solve their disputes.

FINDING 4

Court users, who have the more negative perceptions and experiences when it comes to seeking access to justice, were more likely to not use the courts when needed.

2. Timeliness²⁷

The *Timeliness Experience Index* considers the ‘actual time the disposition of the case took’²⁸ as well as experiences of ‘undue delays during specific procedural steps’²⁹.

The *Timeliness Perception Index* is compiled considering the opinion of court users, business people, judges and lawyers on ‘the Country’s Justice System being quick’³⁰, and whether they feel that the ‘time requested to dispose a case is too long or appropriate’³¹. Further, the index includes the answers to the question whether ‘the length of the trial is among the most serious problems of the country’s justice system’ when compared to other factors hampering justice delivery³².

When reviewing perceptions and experiences of timeliness across the three States, it turns out that, while in Lagos the justice system is perceived as the slowest among the three States, Delta scores worse as far as actual experiences are concerned.

²⁷ It is possible to compare the Nigerian judicial timeliness to an international benchmark of the duration of trials provided by the courts in several countries. The average duration, in calendar days, between the moment of service of process and the moment the judgment is issued is 126 days for Nigeria, against the 120 of Cote D’Ivoire, 90 of Zambia, 60 of Senegal and 42 of Botswana, in the case of eviction of tenants The LEX MUNDI Project Djankov, La Porta, Lopez-de-Silanes, and Shleifer, 2002

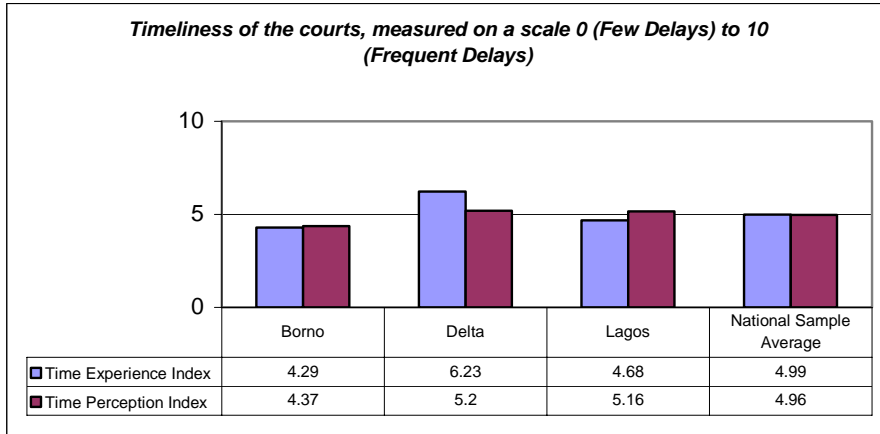
²⁸ Question JD1.2a for Judges, CU3.2f for Court Users, BZ3.2f for Businessmen.

²⁹ Question JD1.14 for Judges, LW5 for Lawyers. (Did you experience undue delays in the following steps of the procedure? Institution of Proceedings, Issue of Summons on Defendant, Service of Summons on Defendant, Discovery of Documents, Interrogatories, Implementation of Bail order, Issue of Summons on Witnesses, Service of Summons of Witnesses, Commencement of Trial, Trial Proceedings, Delivery of Judgment, Obtaining Copy of Judgment, Obtaining Certified Copy of Proceedings, Transmission of Court Record to Appeal, Execution of Judgment)

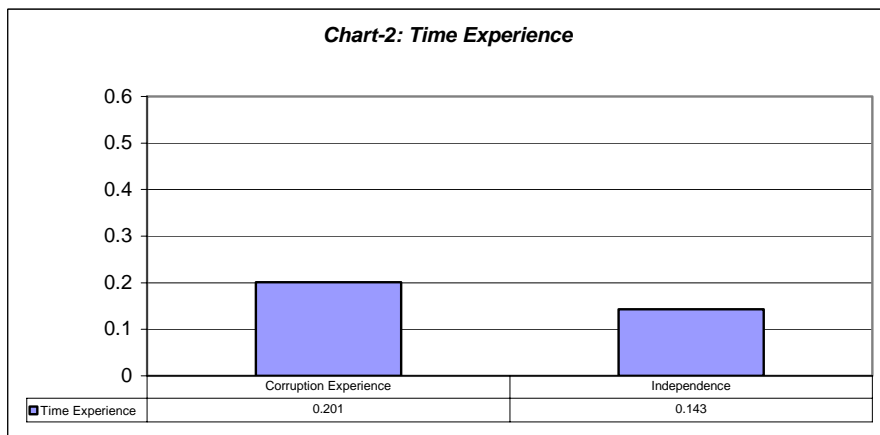
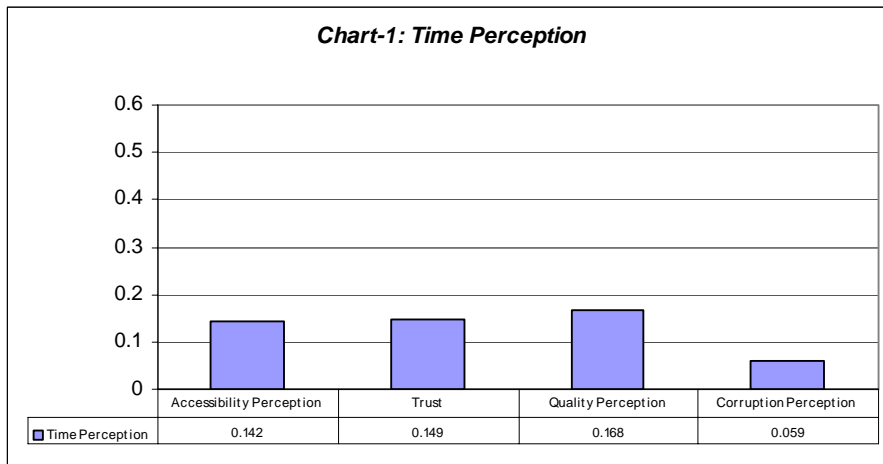
³⁰ Question JD2.1e for Judges, CU1.1e for Court Users, Biz1.1e for Businessmen.

³¹ Question JD1.10 for Judges.

³² Question JD2 for Judges, CU5.1a for Court Users, Biz4.1 for Businessmen.



The strongest correlations could be established between the *Timeliness Experience Index* and experiences with corruption as well as with judicial independence, while the *Timeliness Perception Index* was mainly correlated to the *Quality Experience Index* and the *Trust Index*.



The robust correlation between timeliness and the level of judicial independence implies that less independent courts are also more likely to be slow and inefficient. It can therefore be assumed,

as it has been highlighted by previous studies,³³ that enhanced judicial independence, will not only increase credibility, fairness and impartiality of the judiciary, but also improve the overall efficiency of the courts in handling their caseloads in a timely and efficient manner.

FINDING 6

Enhanced judicial independence, will not only increase credibility, fairness and impartiality of the judiciary, but also improve the overall efficiency of the courts in handling their caseloads in a timely and efficient manner

The analysis further showed a strong correlation between the *Timeliness Perception Index* and of the *Public Trust Index*, indicating that the confidence in the justice system will not improve significantly unless the justice system is rendered more efficient.

Also, lack of timeliness reduces the willingness to use the courts in order to resolve disputes. This is particularly true in those cases, which involve the government as a respondent. In this context, it became clear that those business people, who experienced more delays, were by far less likely to use the formal court system again and openly admitted to rather resolve their disputes informally, not necessarily by licit means.

FINDING 7

Inefficient courts are likely to encourage citizens, not to seek solutions in accordance with the law but to resort to other, often illicit means including corruption

3. Quality

The *Quality Experience Index* includes indicators relating to the capacity of the justice system to establish the rule of law in terms of the reliability of the ‘enforcement of judgments’ and the ‘arrest of the perpetrator of the crime’³⁴. Further it comprises all questions relating to the ‘consistency of the laws, regulations and their interpretation’³⁵, as well as the ‘difficulties encountered when retrieving information from court records’³⁶. Other factors that were included into the *Quality Experience Index* are the ‘frequency of performance evaluations and of inspections’³⁷ of judicial officers as well as the ‘areas covered by these inspections’³⁸.

The variables considered for the *Quality Perception Index* are the evaluation of ‘the services provided’ by the various actors within the justice system including judges, prosecutors, public and private attorneys, court clerks, police, enforcement officers, and by the prisons personnel³⁹.

³³ See the results of the ‘Conference on Delays and Corruption in Indian Judicial System – Remedies’ 18th and 19th December 1999, www.transparency.org

³⁴ Question BZ3.2e for Businessmen, CU3.2e and CU4.2bi for Court Users.

³⁵ Question BZ2.2 for Businessmen.

³⁶ Question JD3.5b for Judges.

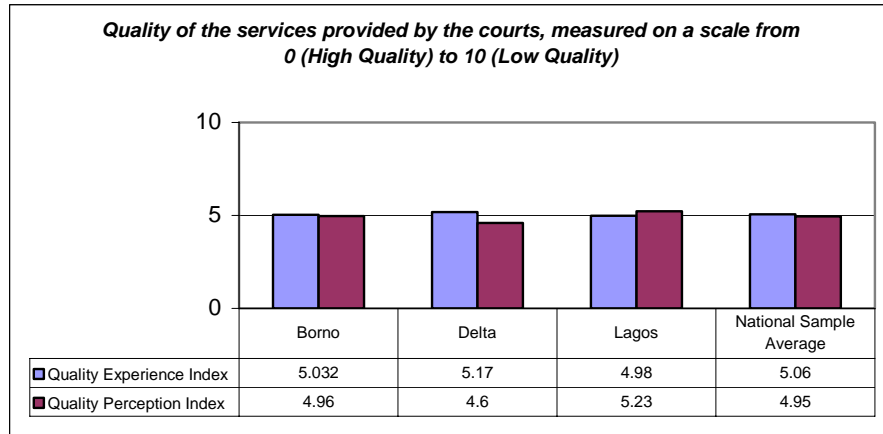
³⁷ Question JD3.3a for Judges.

³⁸ Question JD3.6a and JD3.6b for Judges.

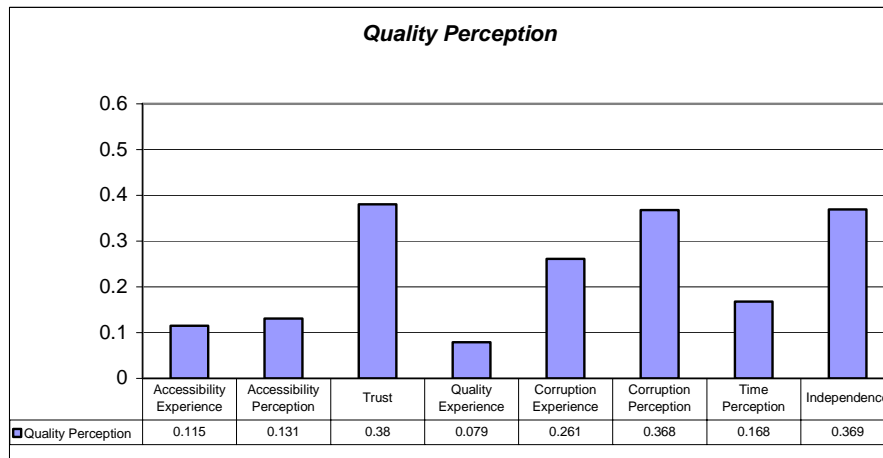
³⁹ Question BZ1.3 for Businessmen, CU1.3 for court users, JD5 for Judges.

Furthermore, the perceptions of the ‘competence of the Judges’⁴⁰ were included as well as of the ‘importance of merit and of the length of service’ in the hiring and career development in the judiciary⁴¹.

While the perceived quality of the justice system is rated the lowest in Lagos State, Delta State scored worse than Lagos and Borno State as far as experiences are concerned.⁴²



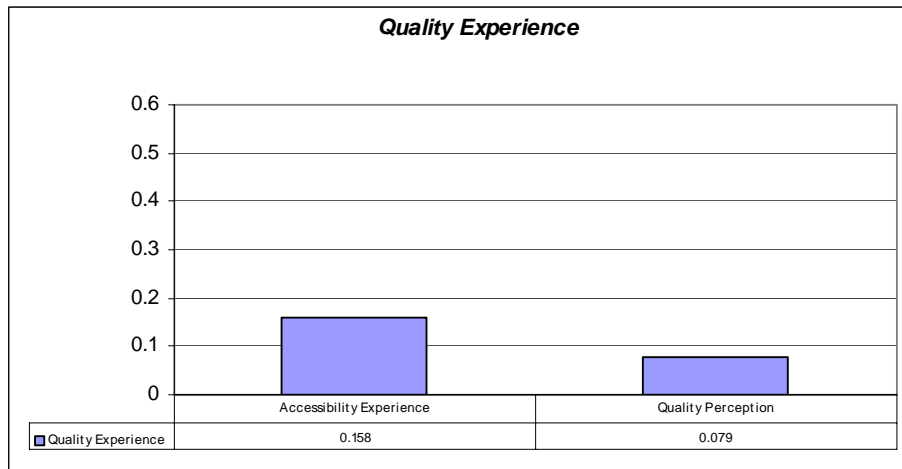
When correlating both quality indices with the other indices, the strongest relations could be established between the *Quality Perception Index* on the one hand and trust, judicial independence and perceived and experienced corruption on the other. The *Quality Experience Index* turned out to be mainly correlated to perceived quality and access to justice.



⁴⁰ Question BZ1.1 for Businessmen, CU1.1 for court users, JD2.1 for Judges.

⁴¹ Question JD3.2a and JD3.2b for Judges

⁴² The charts represent the distribution of the sample per state according to the prevalence of *Quality Experience and Perception Index*. The boxes show the main distribution of the population, the line crossing the box is the index’s average in that state, and the lines under and over the box are the extreme values.



The strong correlation between the perceived quality of the justice system and judicial independence can easily be explained when exploring the links among the single factors compiling the indices. It emerges that political influence in the hiring and promotion of judicial officers, prosecutors and court staff is strongly linked to the perceived quality of justice delivery. Hence improving the quality of justice delivery, e.g. through enhanced training will not automatically improve the quality of the justice system in the eyes of the public, unless a merit based and transparent hiring and promotion system has been put into place.

FINDING 8

Both the perceived and experienced quality of justice delivery can be improved by reducing the importance of political connections and enhancing meritocracy in recruitment, hiring, retention, promotion, retirement and the overall management of staff.⁴³

Further negative opinions on the quality of the justice delivery seem to be linked closely to the components of the *Public Trust Index*, in particular the ability of the justice sector institutions to defend the individual against crime and uphold the rule of law. It is important to note that those components of the *Quality Experience Index*, which relates closely to public trust, such as the experienced the 'arrest of the perpetrator of a crime' or the 'enforcement of a court decision', were also strongly correlated with the *Perception Quality Index*.

Hence; while there is a need for a large variety of measures to improve the quality of justice delivery such as: (i) training, (ii) human resource management; (iii) enhanced meritocracy and, (iv) improvements of the legal framework, there are some key measures linked to the basic security concerns of the citizen and the prevalence of the rule of law, which will, more than any other factor, be the benchmark for the public's opinion of and trust in the justice system.

Some specific proposals for improvement emerge, when analysing the experiences of judges concerning the quality of justice delivery. Here it became evident, that the more specialized judges were, the better their quality related experiences were.

⁴³ According to a previous cross national analysis of the levels of meritocracy in the public sectors, Nigeria scores lower than Cote D'Ivoire, Tunisia and Egypt and is followed only by the Dominican Republic and Kenya ("Bureaucracy and Growth: A cross-National Analysis of the Effects of "weberian" state structures on Economic Growth", Evans & Rauch, 2000).

FINDING 9

Increased specialization of judges will lead to enhanced quality of justice delivery .

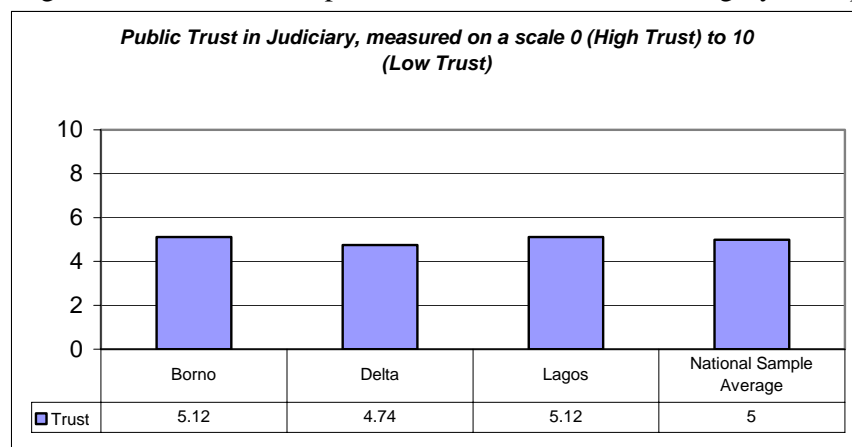
Furthermore, the judges’ perception of quality was inversely correlated to the number of supporting staff at their disposition, meaning the more supporting staff they had, the lower the quality of services perceived. Hence, improving quality does not require an increase of the number of court staff but making them more productive.

FINDING 10

Improving the quality justice does not necessarily require an increase of the number of court staff, but rather increasing professionalism.

4. Public Trust

The nature of the *Public Trust Index* did not allow for a distinction between experience and perception related data. The variables used for the index are the perception of the ‘ability of the country justice system to uphold civil rights’⁴⁴, ‘to defend from crime’⁴⁵ and ‘to support a modern economy’⁴⁶. As far as experience related data is concerned, the index considers as a sign of public trust in the justice system whether the court users or business people ‘did litigate against government in the courts’⁴⁷. A cross-state analysis of the responses show that the trust in the judiciary was higher in Delta State compared to the other two states category of respondents.



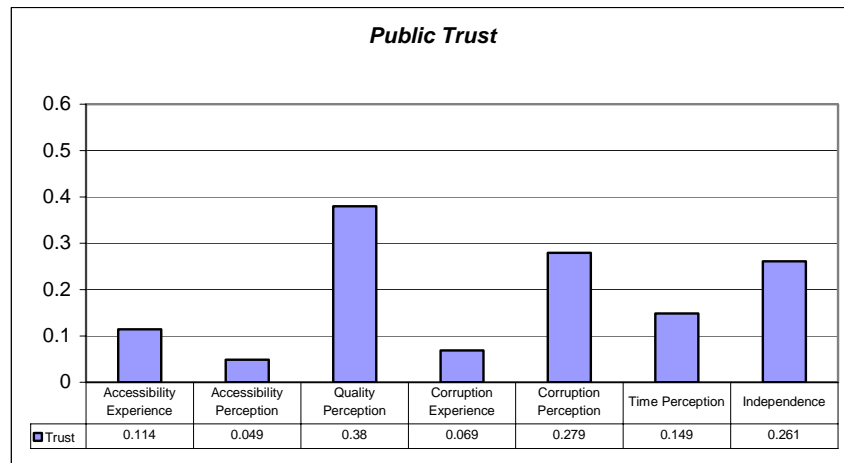
When exploring the correlations to all other indices, the perceptions of quality, independence and corruption were more strongly correlated with public trust.

⁴⁴ Question Bz1.2e for Businessmen, CU1.2d for Court Users and Jd2.2e for Judges.

⁴⁵ Question Bz1.2f for Businessmen, CU1.2e for Court Users and Jd2.2f for Judges.

⁴⁶ Question BZ1.2a for Businessmen, Jd1.2a for Judges.

⁴⁷ Question CU1.5a and CU1.5bi for Court Users and, BZ1.5a and BZ1.5bi for Businessmen.



The trust level, however, does not seem to be determined by the same factors for all categories of respondents. While the judges' opinion is mainly affected by their experiences with corruption in the courts, for the business people it is predominantly determined by the timeliness of the justice delivery or the lack hereof.

As we saw above, public trust is more than to anything else linked to the basic security concerns of the citizens and the prevalence of the rule of law, factor which are mainly influenced by the ability of the system to uphold the citizens' rights, to protect the individual against crime and the reliable enforcement of judicial decisions.

FINDING 11

Public Trust in the criminal justice system is more than anything linked to the basic security concerns of the citizens and the prevalence of rule of law. The main consequence of a low level of public trust in the courts is the declining willingness of citizens to use other courts.

5. Independence, Fairness and Impartiality⁴⁸

All factors relating to the independence, fairness and impartiality of the courts were integrated into the *Independence Index*. It includes questions relating to the level of 'political pressure on the judiciary'⁴⁹ and the 'control that the executive exercise over the courts'⁵⁰, as well as general perceptions of the level of "fairness and impartiality of the courts"⁵¹. As far as merit-based career development is concerned, the index considers, whether hiring or promotion of judicial officers is determined or influenced by 'personal or political connections'⁵², or by the 'social status' of the concerned officer⁵³.

⁴⁸ According to an assessment sponsored by the US Department of the Nigerian judiciary is subject to influence by the executive, more so than it is the case of the judiciaries of Ghana, Zambia and Namibia. (The World Heritage Foundation's "Index of freedom" from 2001)

⁴⁹ Question BZ1.2c for businessmen, CU1.2c for court users, JD2.2d for judges and LW10 for Lawyers.

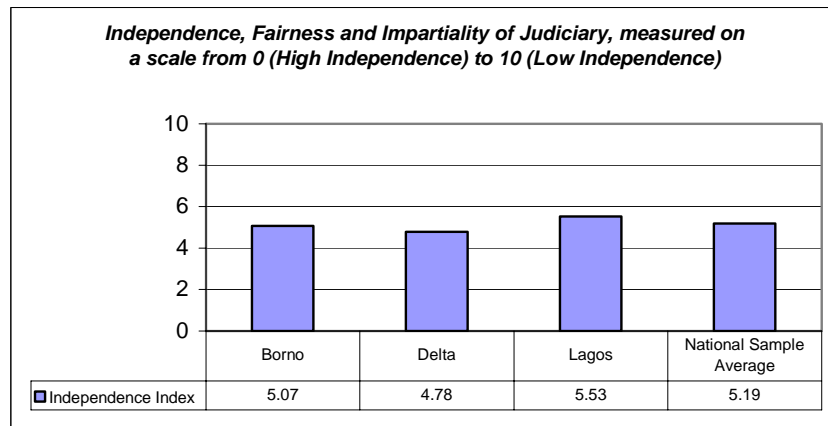
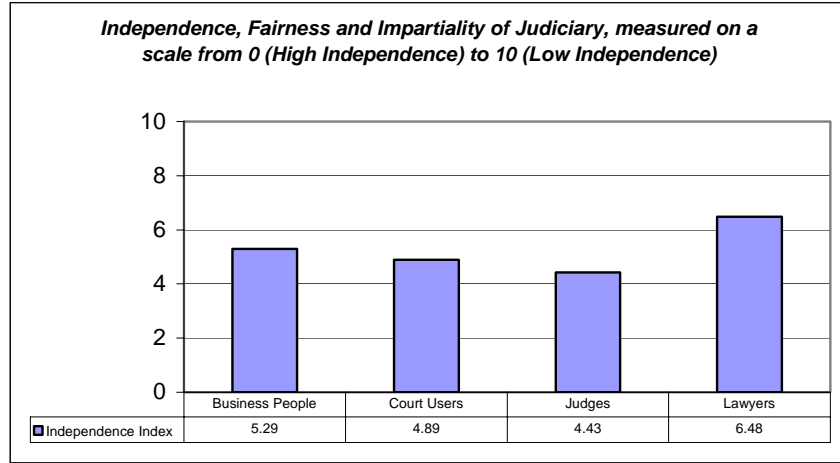
⁵⁰ Question BZ1.2b for Businessmen, CU1.2c for Court Users and JD2.2c for Judges.

⁵¹ Question BZ1.1a for Businessmen, CU1.1a for Court Users and JD2.1 for Judges.

⁵² Question BZ4.1a for Businessmen, CU5.1a for Court Users and JD3.2d , JD3.3c and JD2.2a for Judges, LW9 for Lawyers.

⁵³ Question BZ1.2d for Businessmen, CU1.2a for Court Users

In a cross state analysis we verify that Lagos appears to be the State where the judiciary is perceived as less independent and impartial, when compared with the Delta and Borno State⁵⁴. At the same time, judges have a fairly positive opinion of their independence, while lawyers are most critical ⁵⁵.

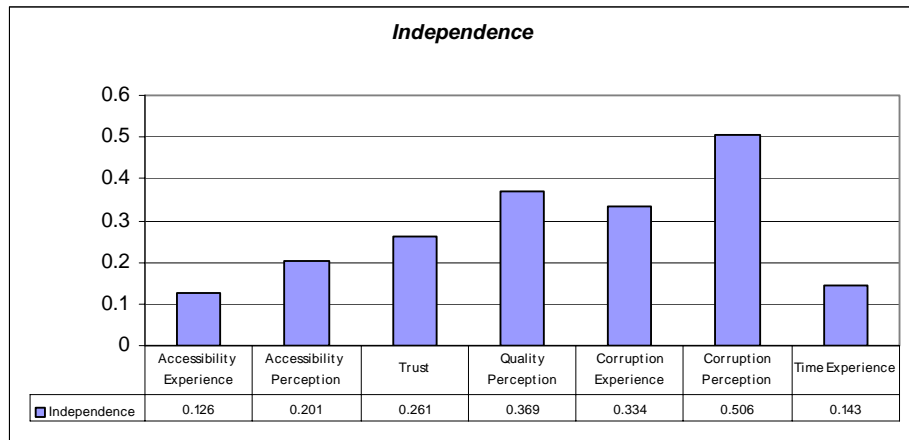


The *Independence Index* emerges as most strongly correlated to the *Corruption Perception Index*, the *Trust Index*, the *Quality Perception Index* as well as both corruption indices and the accessibility indices. ⁵⁶

⁵⁴ The Chart represents the distribution of our sample per state according to the prevalence of Independence Index. The Boxes show the main distribution of the population, the line crossing the box is the Independence Index average in that state, and the lines under and over the box are the extreme values.

⁵⁵ The Chart represents the distribution of our sample per category of respondent according to the prevalence of Independence Index. The Boxes show the main distribution of the population, the line crossing the box is the of Independence Index average in that category, and the lines under and over the box are the extreme values.

⁵⁶ using the Pearson coefficient method of analysis.



Lack of independence is strongly linked with corruption. A judicial system which is influenced by politics or by other factors is constantly undermined in its integrity and loses its ability to curb corruption, both within its own ranks and outside in the public and private sector in general. This suggests that curbing corruption requires a strong and independent judiciary.

FINDING 12

Lack of judicial independence is strongly linked with corruption – curbing corruption requires a strong and independent judiciary.

Moreover, lack of independence hampers the access to justice. Both court users and business people who perceived the judiciary as not independent also shared a considerably less positive assessment of the accessibility of the courts. This bears the danger that citizens will increasingly try to leverage their connections and to use their influence to access or derive services that ideally should be available for everyone. It seems therefore that by rendering the judiciary more accessible to its users, this may also create an environment conducive to reducing the influences of political and non-political connections within the judicial domain.

FINDING 13

Enhancing access to justice will also strengthen judicial independence.

Further, it is crucial to note that the perceptions of judicial independence were more positive in those courts where there was a higher ‘frequency of inspections’ and ‘frequency of performances evaluation in writing’. Thus, the more frequent and thorough performance evaluations are being conducted, the less likely judicial officers and court staff are experiencing preferential treatment because of special connections.

FINDING 14

The perceptions of judicial independence were more positive in courts with a higher ‘frequency of inspections’ and ‘frequency of performances evaluation in writing’

6. CORRUPTION ⁵⁷

The *Corruption Experience Index* is composed of indicators relating to the experiences of the various categories of respondents with ‘unofficial payments to Judges, Lawyers, Court staff, and Police’⁵⁸, as well as to the frequency of ‘payments made with the purpose of obtaining a favourable judgment’,⁵⁹ the ‘number of illegal payments made during the last year’⁶⁰, and ‘episodes of delays caused by corruption’,⁶¹ or, more generally, ‘the use of informal paths for a positive outcome of the dispute’⁶².

The *Corruption Perception Index* includes the responses of the various stakeholders to questions concerning the ‘levels of corruption in the courts’⁶³. Furthermore, the Index includes the findings from questions asking respondents, ‘to rate corruption as one of the factors hampering justice delivery in comparison with other shortcomings and their effect on justice delivery’⁶⁴.

From a cross-state comparison of the *Corruption Perception* and the *Corruption Experience Index*, Lagos emerged as the State where corruption in the justice system seems most prevalent⁶⁵. When correlating the two indices, it turned out, that high levels of perceived corruption correspond to frequent experiences with corrupt practices in the justice system. However, there were also a significant number of cases where high levels of perception could not be explained by an equally high level of experiences. This suggests that, while generally speaking experiences and perceptions are consistent, perceptions of corruption are not exclusively based on actual experiences.

⁵⁷ According to different sources Nigeria suffers of a widespread corruption, both in terms of petty and grand corruption. Transparency international rank Nigeria as the second most corrupted in its Transparency International Perception Index. Past studies focusing on the specificity of the Judicial Corruption have given to Nigeria a middle ranking position, doing better than Kenya and Tanzania, but worse than Senegal, Ghana, and Botswana⁵⁷. (Mikael Priks, "Institutions in Corrupt Societies", November 2001- World Business Environment Survey 1997 "Measuring Conditions for Business Operation and Growth, World Bank. "In resolving business disputes, do you believe your country's court system to be honest/ uncorrupted?" 1=always, 6=never).

⁵⁸ Question CU7 for Court Users, Lw12 for Lawyers, Jdg4 for Judges (Did you pay or Are you aware of anyone being asked to pay any unofficial money to Court Clerk, Enforcement Officer, Police Officer, Judge, Lawyer?). Question CU4.2biv for Court Users (Did you receive indication to pay the police to investigate?)

⁵⁹ Question CU3.2i for court users and Biz3.2hi for businessmen (Did you or your firm have to pay bribes required by court officials, Judicial Police, Court Clerk, Judge, Attorney, Enf.Officials, in order to get a favorable decision in the case?).

⁶⁰ Question CU9 for Court Users Lw15 for Lawyers (How Many Times these payments occurred in the past year).

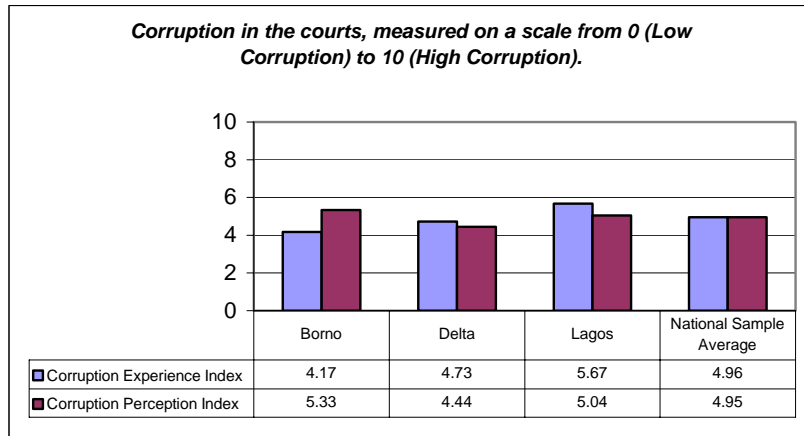
⁶¹ Question Lw6 for Lawyers (Would you attribute such delay to corruption?)

⁶² Question CU1.5biii for court users, Biz1.5biii for businessmen (Did you informally or unofficially attempt to favorably solve the complaint?).

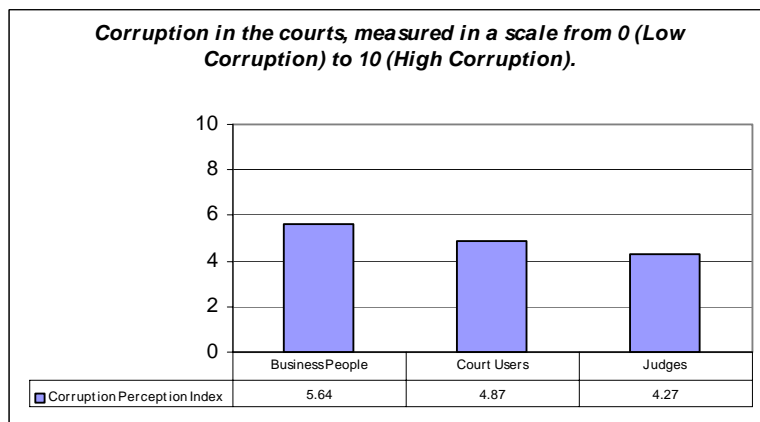
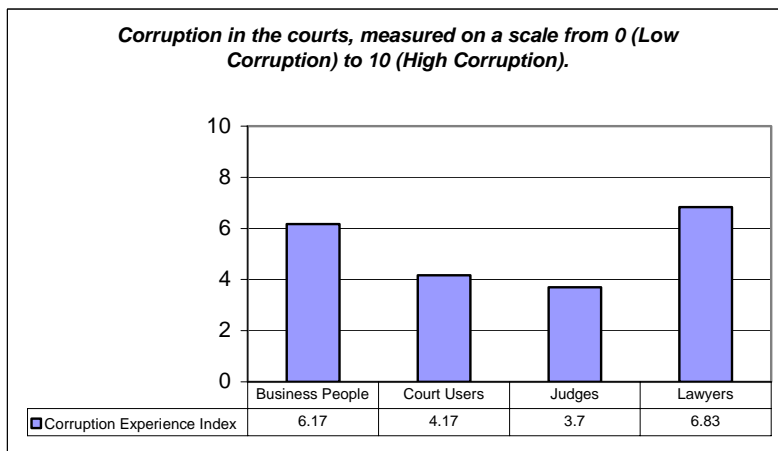
⁶³ Question CU1.1b for Court Users, Biz1.1b for Businessmen, Jdg2.1b for Judges (do you believe you CJS to be uncorrupt and transparent?)

⁶⁴ Question CU5.1a for Court users, Biz4.1a for businessmen, Jud2.7 for Judges (Too High unofficial payments to judges and the courts is the most important obstacle to use the courts)

⁶⁵ The Chart represents the distribution of our sample per state according to the prevalence of Corruption Experience Index. The Boxes show the main distribution of the population, the line crossing the box is the Corruption Experience Index average in that state, and the lines under and over the box are the extreme values.



A thorough analysis of both the *Corruption Experience Index* and the *Corruption Perception Index* revealed that lawyers and business people, compared to court users, are more likely to experience corruption and to perceive the courts as corrupt. There could be various reasons for these differences. E.g. lawyers and business people may be more likely to bribe judicial officers and court staff out of their own initiative or respond to requests for bribes, since they know this is the only way of “getting things done”. It is also possible that court users, due to a lack of knowledge, are often defrauded by court staff requesting payments for services that should be free of charge, rather than asking for a bribe. suggests that raising the awareness of court users concerning filing fees and other court related costs for each case type may constitute a valid measure to reduce the opportunities of court staff to request fraudulently inexistent “fees”.

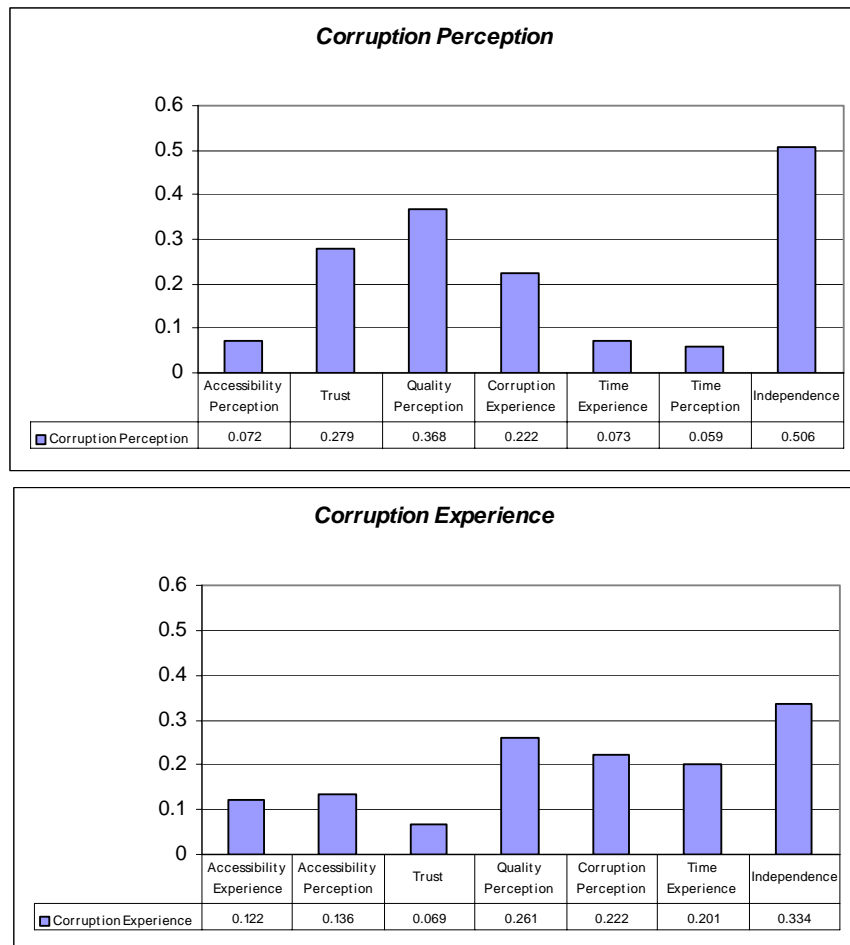


A further analysis of the above chart, revealed, that the lawyers’ perceptions of corruption, among others, are dependent on whether they have worked as corporate counsels, which in turn calls for more intense monitoring of commercial cases. At the same time the finding suggests, that businesses should be made aware how and to whom they may complain to, when asked for a bribe, and warned of the consequences in case they should bribe a court official. Also, the introduction of the criminal liability of legal persons seems a viable policy option.

FINDING 15

Lawyers and business people, compared to court users, are more likely to experience corruption and to perceive the courts as corrupt.

When comparing the *Corruption Perception Index* and the *Corruption Experience Index* with all the other indices considered in this study, both relate strongly to judicial independence and the perception of quality while the correlations with the other indices are weaker.⁶⁶



The *Corruption Experience Index* is also linked to the *Timeliness Experience Index*, confirming the strong relation between delays and corruption.⁶⁷ Delays are a compelling incentive for the

⁶⁶ expressed through the correlation coefficients (Pearson),

court users to accelerate the procedure by paying bribes. Often delays are used as an implicit request for a bribe in exchange for an unanticipated ‘service’. The finding suggests that the likelihood of incidents of corruption directly depends on the overall duration of the case.

However, it was not only possible to link the *Corruption Perception Index* to timeliness, but also to specific procedural steps. In particular, the payment of bribes occurred in connection with the application for bail, the institution of proceedings, the issuing of summons of the defendant, interrogatories, delivery of judgments and the obtaining of certified copies of proceedings.

Furthermore, it was possible to establish a correlation between the *Corruption Experience Index* and *Accessibility Experience Index*. Again people who had to return to court several times for the same case were the ones that more frequently were asked to pay bribes. It seems therefore safe to assume that any measure speeding up the trial in general, and reducing the number of adjournments in particular will not only assist in increasing the timeliness of justice delivery, but also reduce the opportunities for corrupt practices in the courts and enhance access to justice.

FINDING 16

There is a strong linkage between delays, corruption and access to justice or the lack thereof, which suggests that speeding up the trial in general and reducing the number of adjournments in particular will assist in:

- increasing the timeliness of justice delivery
- reduce the opportunities for corrupt practices in the courts and
- enhance access to justice.

At the same time it became evident, that the more difficult it is to report to the police the more frequent bribes are paid to them. In other words, it appears that the police often discourages the reporting of crimes and remains inactive unless being bribed. This makes it necessary for citizens to be educated about the duties of the police and how and to whom to complain to in case of the violation of these duties.

Several studies confirmed that judicial independence is one of the main guarantees of the capability of the judiciary in curbing crime and to prevent the spread of corruption. This finding was also confirmed by the current study through the strong correlation between the *Corruption Experience Index*, the *Independence Index* and the *Trust Index*. Court users, who paid bribes to court staff or other officers in the justice sector more frequently, were also more likely to perceive the judiciary as lacking independence and did not trust in its ability to defend their civil rights and to protect them from crime. We can hypothesize at this stage that the loss of trust in the institution and the spread of corruption are part of a vicious cycle, both feeding on each other: the more corruption the less trust, the less trust the more prone people become to accept bribery as a given fact, when dealing with the justice sector institutions.

FINDING 17

⁶⁷ See Vannucci, Alberto (2000) “Corruption, Political Parties, and Political Protection” European Institute-Robert Shuman Centre.

Kaufmann, Daniel and Shang-Jin Wei, “Does ‘Grease Money’ Speed Up the Wheels of Commerce?” 1999. NBER Working Paper No 7093

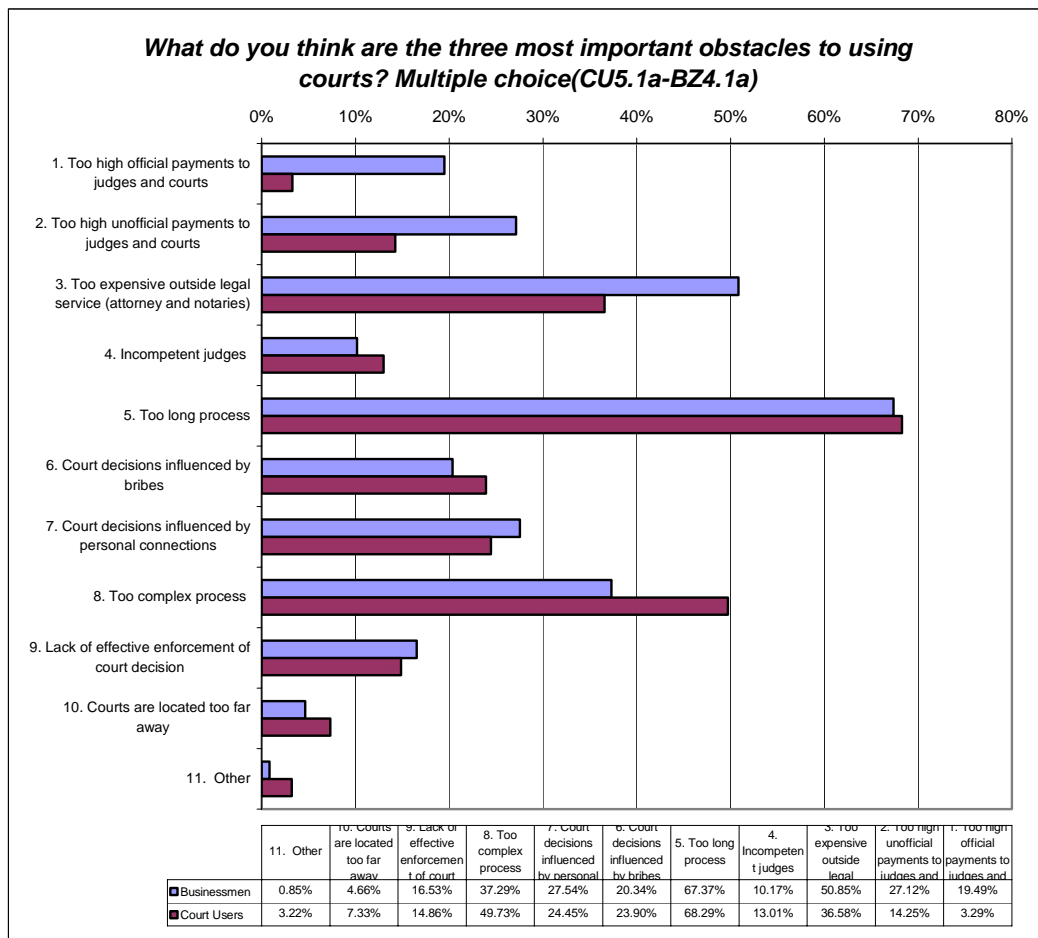
Knack, Stephen and Philip Keefer. 1995. *Institutions and Economic Performance: Cross-Country Tests Using Alternative Institutional Measures*” *Economics and Politics*. 7(3): 207-227)

The more corruption the less trust, the less trust the more people accept bribery as a given fact, when dealing with the justice sector institutions

Furthermore, the relation between ‘sanctions for poor performance; and unprofessional conduct’ and experiences of corruption was explored. The statistics show that lower levels of judicial corruption are experienced in those judicial domains where ‘judges’ performances are evaluated in writing’ more frequently, and where ‘guidelines/policies/regulations on personnel management were formalised in writing’. This suggests that performance evaluation is an effective tool for strengthening the overall discipline, accountability and transparency within the courts.

C. MAIN PROBLEMS ACCORDING TO INTERVIEWEES

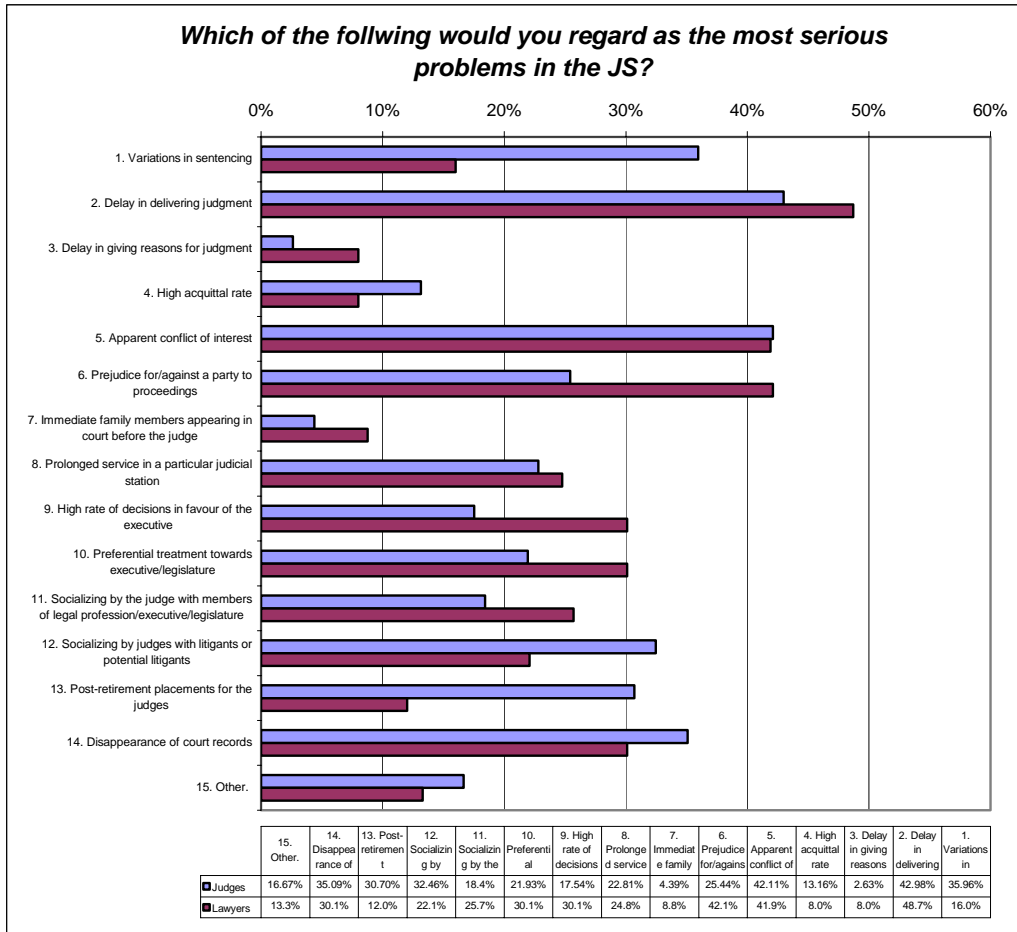
When asked what, in their view, were the most important obstacles to using the courts, Court Users and Business People stressed in particular the length of the process, the financial means required in order to cover lawyer fees, and complexity of the process as the biggest obstacles.



Judges and lawyers confirmed this assessment to some degree, when identifying *delays in the delivery of judgment* as the most serious problems facing the justice system (43%). However, when considering together the ratings of *apparent conflicts of interest* (42%), the *socializing with litigants or potential litigants* (33%) as well as with *other members of the legal profession, the executive or legislature* (26%), the *preferential treatment of the executive and legislative branch*

(21%), and *the prejudice against a party* (42%), the judges seem to rate these various forms of the same phenomenon, that is the abuse of functions, as the most serious problem of the justice system. Other shortcomings, which are often related to corruption, and that were mentioned by many of the respondents included the *disappearance of court records*. 35% and *variation in sentencing* (38%).

Lawyers considered timeliness even a bigger issue than judges did.. 48% of the respondents felt that *delays in delivering the judgement* (48%) was the most serious problem facing the system, followed *apparent conflict of interest* (42%), and *prejudice against a party*. (42%).



V. POLICY RECOMMENDATIONS

A. INTRODUCTION

This part of the report will provide recommendations to be adopted in order to leverage the capacity and the integrity of the Nigerian Judicial System.

The recommendations are based on:

- a) The inputs from the judges and lawyers interviewed as part of the assessment.
- b) The inputs from the UNODC sponsored International Judicial Group, originally composed of the Chief Justices and Senior Judges of Bangladesh, Karnataka (India), Nepal, Nigeria, South Africa, Sri Lanka, Tanzania and Uganda.
- c) The conclusions of the 36 Chief Judges, participating in the First Federal Integrity Meeting in Abuja 2001.
- d) The findings resulting directly from the analysis of the data collected as part of this assessment.

B. RECOMMENDATIONS BY JUDGES & LAWYERS

When asked to indicate the most and second most effective measure, judges and lawyers stressed the need for *more and better equipment* (84%), *higher salaries* (74%) and *increased budgetary resources* (66%) together with *improved case management* (70%) as key measures to improve the current situation. They also highlighted the need for increased *independence from other powers* (64%), both in terms of *immunity from political influence* and *greater autonomy*. Other measures included enhancing the *consistency of laws and regulations* (60%), and *better trained staff* (59%).

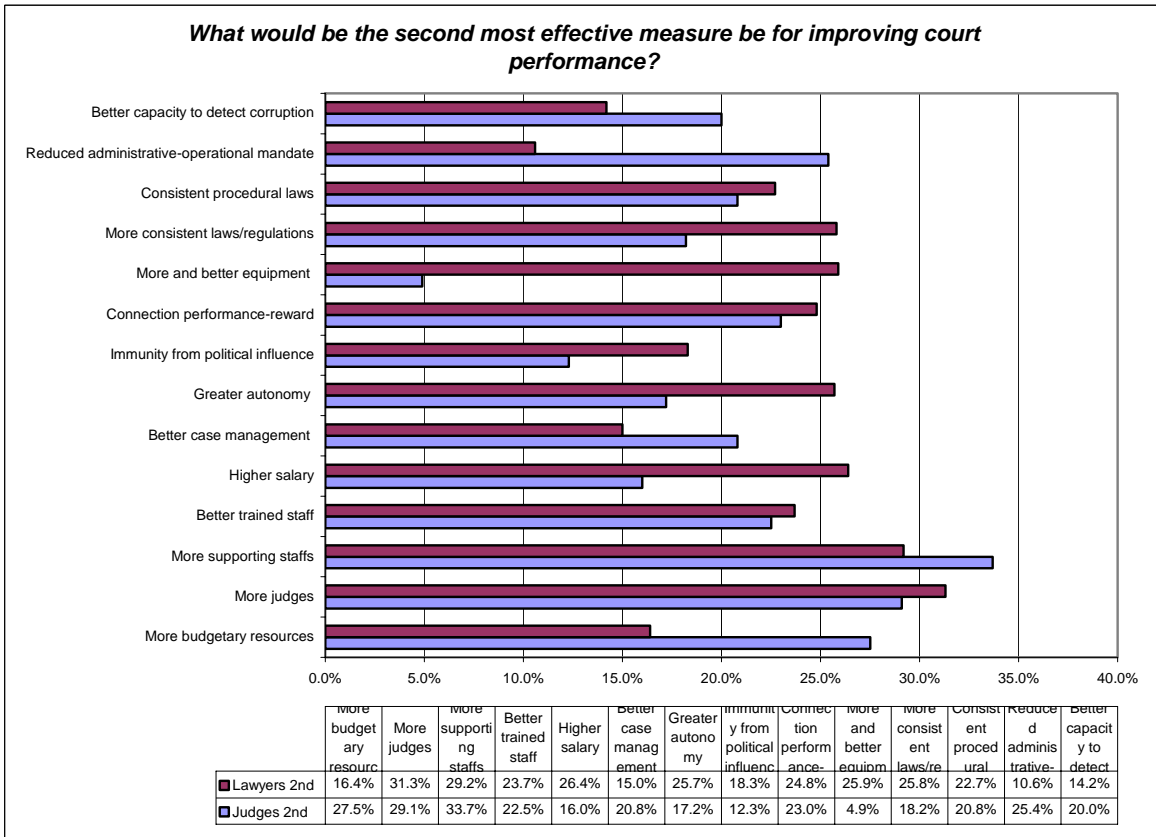
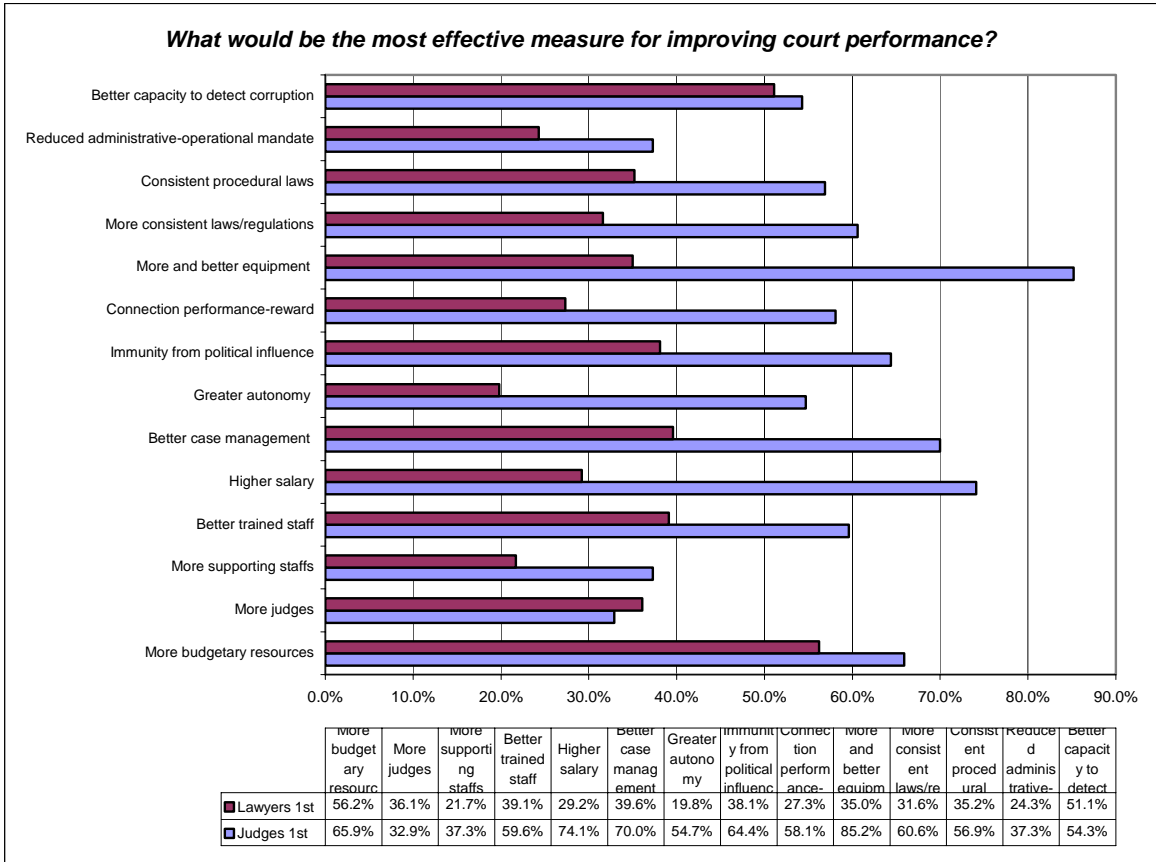
Recommendations made by Judges

- a) more and better equipment (84%)
- b) increase salaries (73%)
- c) improve case management (70%)
- d) increase budgetary resources (66%)
- e) increase immunity from political influence (64%)

Lawyers emphasized the *need to increase budgetary resources* (56%), improve the *capacity to detect corruption* (51%) and *increased independence from the political influence* (48%). Moreover, they pointed out enhance *case management capacities* (39%).

Recommendations made by Lawyers

- a) increase budgetary resources (56%)
- b) improve capacity to detect corruption (51%)
- c) improve case management (39%)
- d) better trained staff (39%)
- e) increase immunity from political influence (38%)



When Judges and Lawyers are asked to suggest *the second* most effective measure to improve courts performance, they recommended more supporting staff and more judges.

Other recommendations by Judges included: (i) more budgetary resources (27%), (ii) reduce the administrative-operational mandate (26%), and (iii) enhancing meritocracy (23%).

Lawyers, furthermore, recommended: (i) higher salaries (27%), (ii) more and better equipment (26%), (iii) greater autonomy (26%), and (iv) more consistent laws/regulations (26%).

C. RECOMMENDATIONS BY JUDICIAL LEADERSHIP GROUP

1. Introduction

Under the Framework of the Global Programme Against Corruption and in conjunction with the 10th United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Vienna, Austria in April 2000, the United Nations Office on Drugs and Crime (UNODC), in collaboration with Transparency International convened a two day workshop for Chief Justices and other senior judges from eight Asian and African countries, including the Non. L.M. Uwais, Chief Justice of Nigeria. The purpose of the workshop was to consider means of strengthening judicial institutions and procedures as part of strengthening the national integrity systems in the participating countries and beyond. The suggestions of the Group included the following:

2. Addressing Systemic Causes of Corruption

(1) *Data Collection*: There is a need for the collection and national and international exchange of information concerning the scope and variety of forms of corruption within the judiciary. There is a need to establish a mechanism to assemble and record such data and, in appropriate format, to make it widely available for research, analysis and response. In the context of the UN Global Programme Against Corruption and in initiatives for crime prevention, the establishment of an international data base of this kind, in appropriate format, should be a high priority.

(2) *Remuneration*: There is a need to improve the low salaries paid in many countries to judicial officers and court staff. Where it exists, there is a need to abolish the traditional system of paying “tips” to court staff on the filing of documents and the replacement of such salary supplements by conventional remuneration.

(3) *Monitor*: There is a need to establish in every jurisdiction an institution, independent of the judicature itself, to receive, investigate and determine complaints of corruption allegedly involving judicial officers and court staff. Such an institution should include serving and past judges. It should possibly have a wider mandate and, where appropriate, be included in a body having a more general responsibility for judicial appointments, education and action or recommendation for removal from office.

(4) *Judicial Appointments*: There is a need to institute more transparent procedures for judicial appointments to combat the actuality or perception of corruption in judicial appointments (including nepotism or politicisation) and in order to expose candidates for appointment, in an appropriate way, to examination concerning allegations or suspicion of past involvement in corruption.

(5) *Codes of Conduct*: There is a need for the adoption of judicial codes of conduct, for the inclusion of instruction in such codes in the education of new judicial officers and for information to the public about the existence and provision of such codes against which the conduct of judicial officers may be measured.

(6) *Adherence*: There is a need to enhance requirements for newly appointed judicial officers formally to subscribe to such a judicial code of conduct and to agree, in the case of proved breach in a serious respect of the requirements of such code, to resign from judicial or related office.

(7) *Delay*: There is a need for the adoption in such a code and in practical administration of publicly available standards for the timely delivery of judicial decisions and for appropriate mechanisms to ensure that such standards are observed.

(8) *Assignment*: There is a need for the adoption of a transparent and publicly known (and possibly random) procedure for the assignment of cases to particular judicial officers to combat the actuality or perception of litigant control over the decision-maker.

(9) *Sentencing Guidelines*: There is a possible need for the adoption of sentencing guidelines or other means to identify clearly criminal sentences and other decisions which are so exceptional as to give rise to reasonable suspicions of partiality.

(10) *Case Loads*: There is a need for attention to excessive caseloads for individual judicial officers and the maintenance of job interest and satisfaction within the judiciary.

(11) *Public Knowledge*: There is a need to improve the explanation to the public of the work of the judiciary and its importance, including the importance of maintaining high standards of integrity. The adoption of initiatives such as a National Law Day or Law Week should be considered.

(12) *Civil Society*: There is a need to recognise that the judiciary operates within the society of the nation it serves and that it is essential to adopt every available means of strengthening the civil society of each country as a means of reinforcing the integrity of the judiciary and the vigilance of the society that such integrity is maintained. To combat departures from integrity and to address the systemic causes of corruption, it is essential to have in place means of monitoring and auditing judicial performance and of the handling of complaints about departures from high standards of integrity in the judiciary.

3. Initiatives Internal to the Judiciary

(13) *Plan of Action*: A national plan of action to combat corruption in the judiciary should be adopted.

(14) *Participation of Judiciary*: The judiciary must be involved in such a plan of action.

(15) *Seminars*: Workshops and seminars for the judiciary should be conducted to consider ethical issues and to combat corruption in the ranks of the judiciary and to heighten vigilance by the judiciary against all forms of corruption.

(16) *Computerisation of Records*: Practical measures should be adopted, such as computerisation of court files, in order to avoid the reality or appearance that court files are “lost” to require “fees” for their retrieval or substitution. In this respect, modern technology should be utilised by the judiciary to improve efficiency and to redress corruption.

(17) *Direct Access*: Systems of direct access should be implemented to permit litigants to receive advice directly from court officials concerning the status of their cases awaiting hearing.

(18) *Peer Pressure*: Opportunities for proper peer pressure to be brought to bear on judicial officers should be enhanced in order to help maintain high standards of probity within the judicature.

(19) *Declaration of Assets*: Rigorous obligations should be adopted to require all judicial officers publicly to declare the assets of the judicial officer concerned and of parents, spouse, children and other close family members. Such publicly available declarations should be regularly updated. They should be inspected after appointment and monitored from time to time by an independent and respected official.

(20) *Judges’ Associations*: Associations of Judges and equivalent bodies should be involved in the setting of standards for the integrity of the judiciary and in helping to rule on best practices and to report upon the handling of complaints against errant judicial officers and court staff.

(21) *Internal Procedures*: Internal procedures should be adopted within court systems, as appropriate, to ensure regular change of the assignment of judges to different districts having regard to appropriate factors including the gender, race, tribe, religion, minority involvement and other features of the judicial office-holder. Such rotation should be adopted to avoid the appearance of partiality.

(22) *Law of Bias*: Judicial officers in their initial education and thereafter should be regularly assisted with instruction in binding decisions concerning the law of judicial bias (actual and apparent) and judicial obligations to disqualify oneself for actual or perceived partiality.

(23) *Judges’ Journal*: A judge’s journal should, if it does not already exist, be instituted and it should contain practical information on all of the foregoing topics relevant to enhancing the integrity of the judiciary.

3 Initiatives External to the Judiciary

(24) *Media*: The role of the independent media as a vigilant and informed guardian against corruptibility in the judiciary should be recognised, enhanced and strengthened by the support of the judiciary itself.

(25) *Media Liaison*: Courts should be afforded the means to appoint, and should appoint, Media Liaison Officers to explain to the public the importance of integrity in the judicial institution, the procedures available for complaint and investigation of corruption and the outcome of any such investigations. Such officers should help to remove the causes of misunderstanding of the judicial role and function, such as can occur (e.g. in a case involving an ex parte proceeding).

(26) *Inspectorate*: An inspectorate or equivalent independent guardian should be established to visit all judicial districts regularly in order to inspect, and report upon, any systems or procedures

that are observed which may endanger the actuality or appearance of probity and also to report upon complaints of corruption or the perception of corruption in the judiciary.

(27) *National Training Centres*: National training centres should be established for the education and training of officers involved in inspecting courts in relation to allegations of corruption. Such training centres should include the participation of judicial officers themselves at every level so as to ensure that the inspectorate is aware of the functions and requirements of the judiciary, including the importance of respecting and maintaining judicial independence.

(28) *Alternative Resolution*: Systems of alternative dispute resolution should be developed and made available to ensure the existence of alternative means to avoid, where they exist, actual or suspected corruption in the judicial branch of government.

(29) *Bar Associations*: The role and functions of Bar Associations and Law Societies in combating corruption in the judiciary should be acknowledged. Such bodies have an obligation to report to the appropriate authorities instances of corruption which are reasonably suspected. They also have the obligation to explain to clients and the public the principles and procedures for handling complaints against judicial officers. Such bodies also have a duty to institute effective means to discipline members of the legal profession who are alleged to have been engaged in corruption of the judicial branch.

(30) *Disbarment*: In the event of proof of the involvement of a member of the legal profession in corruption whether of a judicial officer or of court staff or of each other, in relation to activities as a member of the legal profession, appropriate means should be in place for investigation and, where proved, disbarment of the persons concerned.

(31) *Prosecutors*: The role of public prosecutors in the investigation of allegations of judicial corruption should be acknowledged and appropriate training should be available to such officers.

(32) *Judicial Administrators*: The proper function of judicial administrators to establish systems that help to combat the possibility or appearance of judicial corruption should be acknowledged. Appropriate training for such administrators in this respect should be available.

(33) *Involving Others*: Procedures that are put in place for the investigation of allegations of judicial corruption should be designed after due consideration of the viewpoint of judicial officers, court staff, the legal profession, users of the legal system and the public. Appropriate provisions for due process in the case of a judicial officer under investigation should be established bearing in mind the vulnerability of judicial officers to false and malicious allegations of corruption by disappointed litigants and others.

(34) *Criminal Law*: It should be acknowledged that judges, like other citizens, are subject to the criminal law. They have, and should have, no immunity from obedience to the general law. Where reasonable cause exists to warrant investigation by police and other public bodies of suspected criminal offences on the part of judicial officers and court staff, such investigations should take their ordinary course, according to law.

D. RECOMMENDATIONS BY FEDERAL INTEGRITY MEETING

Also, the First Federal Integrity Meeting for Chief Judges, held by the Chief Justice of Nigeria and UNODC in 2001 came up with a series of recommendations covering four priority areas, namely access to justice, timeliness and quality of justice, public trust and the effectiveness and credibility of the complaints system. More specifically the Meeting issued the following recommendations:

1. Access to justice

- a) **Code of conduct** reviewed and, where necessary revised, in ways that will impact on the indicators agreed at the Workshop. This includes comparing it with other more recent Codes, including the Bangalore Code. It would also include an amendment to give guidance to Judges about the propriety of certain forms of conduct in their relations with the executive (e.g. attending airports to farewell or welcome Governors). Ensure that anonymous complaints are received and investigated appropriately.
- b) Consider how the **Judicial Code of Conduct** can be made more widely available to the public (e.g. hand outs, posters in the courts etc.)
- c) Consider how best Chief Judges can become involved in enhancing the **public's understandings** of basic rights and freedoms, particularly through the media.
- d) **Court fees** to be reviewed to ensure that they are both appropriate and affordable.
- e) Review the adequacy of **waiting rooms** etc. for witnesses etc. and where these are lacking establish whether there are any unused rooms etc. that might be used for this purpose. Where rooms are not available explore other possibilities to provide shade and shelter for witnesses in the immediate proximity of courts (*Measure 5.1*) *Action: All Chief Judges*
- f) Review the number of **itinerant Judges** with the capacity to adjudge cases away from the court centre
- g) Review arrangements in their courts to ensure that they offer **basic information to the public on bail-related matters**.
- h) Press for empowerment of the court to impose **suspended sentences and updated fine levels**

2. Quality of Justice

- a) Ensure high levels of **cooperation between the various agencies** responsible for court matters (police; prosecutors; prisons)
- b) **Criminal Justice and other court user committees** to be reviewed for effectiveness and established where not present, including participation by relevant non-governmental organisations.
- c) **Old outstanding cases** to be given priority and regular decongestion exercises undertaken.
- d) **Adjournment requests** to be dealt with as more serious matters and granted less frequently.
- e) **Review of procedural rules** to be undertaken to eliminate provisions with potential for abuse.
- f) Courts at all levels to commence **sittings on time**.
- g) **Increased consultations** between judiciary and the bar to eliminate delay and increase efficiency. (

- h) Review and if necessary increase the number of Judges practising **case management**.
- i) Ensure **regular prison visits** undertaken together with human rights NGOs and other stakeholders.
- j) **Clarify jurisdiction** of lower courts to grant bail (e.g. in capital cases).
- k) Review and ensure the adequacy of the number of **court inspections**.
- l) Review and ensure the adequacy of the number of **files called up under powers of review**.
- m) Examine ways in which the availability of **accurate criminal records** can be made available at the time of sentencing.
- n) Develop **Sentencing Guidelines** (based on the United States' model)
- o) Monitor cases where **ex parte injunctions** are granted, where **judgements are delivered in chambers**, and where **proceedings are conducted improperly in the absence of the parties** to check against abuse
- p) Ensure that **vacation Judges only hear urgent cases** by reviewing the lists and files.

3. **Public Confidence in the Courts**

- a) Introduce **random inspections** of courts by the ICPC

4. **Improving effectiveness in responding to public complaints**

- a) Systematic registration of complaints at the federal, state and court level
- b) Increase public awareness regarding public complaints mechanisms
- c) Strengthening the efficiency and effectiveness of the public complaints system.

E. **RECOMMENDATIONS BASED ON THE ASSESSMENT**

1. **Accessibility to the Courts**

Key recommendations to increase accessibility to the courts:

- Reduce the number of adjournments and the total time required to resolve the case
- Streamline the legal framework and its interpretation;
- Establish and enforce clear rules for the reporting of crimes and obtaining information from the police;
- Improve public understanding/awareness raising regarding citizens' rights, especially in relation to bail processes;
- Training of police with a special focus on the relationship to the public ⁶⁸;
- Make sure that information regarding laws and regulations are made available to all the stakeholders in the justice process;
- Strengthen Alternative Dispute Resolution (ADR) systems in order to provide for effective and timely dispute resolution able to support a modern economy;

⁶⁸ The current Police recruitment undergo a six to nine month training session at one of the police colleges located in each of the four geographic regions of Nigeria (north, east, west, and midwest) and Lagos. Most recruits are expected to have a high school diploma in order to be admitted into the Recruit grade of the police force. However, some recruits have first school learning certificates or a West African school certificate Police officer cadets are trained at the Nigerian Police Academy in Lagos. Some cadets are trained in England, the United States, India, and Pakistan. The length of training at the police academy ranges from one to three years, depending on the cadet's previous level of education. Persons with a university degree such as a Bachelor of Arts or Bachelor of Science spend less than three years in training before they are commissioned Assistant Superintendent. Officers of the Nigerian police force are presently recruited among university graduates. (WORLD FACTBOOK OF CRIMINAL JUSTICE SYSTEMS-NIGERIA by Obi N.I. Ebbe, State University of New York at Brockport, <http://www.ojp.usdoj.gov/bjs/pub/ascii/wfbcjnig.txt>)

- Increase awareness regarding Alternative Dispute Resolution (ADR) systems;
- Ethnicity and income are demonstrated to be factors reducing the access to the courts. This calls for greater compliance by all justice sector institutions with the *International Covenant on Civil and Political Rights*. In particular, any person subject to a trial needs to be informed in a language, which they understand, and be provided with an interpreter if he or she cannot understand or speak the language of the court.⁶⁹

2. Timeliness and Quality of Justice Delivery

The analysis showed that the confidence in the justice system is as much influenced by its independence, impartiality and fairness as by its efficiency. Consequently, the public trust in the courts will not improve significantly unless the justice system is rendered more efficient.

Key recommendations made to improve the quality and the timeliness of justice delivery include to:

- Enhance transparency and meritocracy in the hiring, management and promotion of both judicial and court staff;
- Reduce the importance of political connections in staff treatment;
- Ensure reliable and timely enforcement of judicial decisions, in particular when linked to the basic security concerns of the citizen and the prevalence of the rule of law;
- Increase the specialisation of judges;
- Enhance training and supervision of court staff;
- Improve the functions carried out by the Police from the stage of reporting of cases to investigation and prosecution;
- Increase inter-agency coordination and cooperation across the justice system;
- Conduct regular prison audits to determine the circumstances of prisoners awaiting trial (offence, date of last appearance before the court, and current case status);
- Reduce prison congestion through a committee examining the cases identified during prison audits on their merit and recommending how cases should be treated expeditiously;
- Provide more training courses for all the participants in the justice process, namely: (i) the Judges, (ii) court staff, (iii) law enforcement/prisons personnel, and most importantly, (iv) the State Counsels/Prosecutors.

3. Trust in the Justice System

Public confidence in the criminal justice system is mainly linked to the actual or perceived lack of judicial independence, corruption, delays and the weak enforcement of judicial decisions. It is therefore, that particularly those recommendations targeted at addressing these problems that will also eventually enhance public trust. Nevertheless there are also a number of measures, which should be undertaken in addition to improve the trust level of the public.

Key Recommendations to improve the public trust in the justice system include:

⁶⁹ The International Covenant on Civil and Political Rights, signed by Nigeria the 29 October 1993, CCPR art.14 paragraph 3 states that:

(a) All persons shall be equal before the courts and tribunals....

(b) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(c) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(d) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

- Establishing Court User Committees to improve the relationship between the public and the courts;
- Managing the public trust through regular assessments of trust levels between different parts of the Criminal Justice system and the public;
- Enforcing judicial decision in a reliable and consistent manner.

4. Independence, Fairness and Impartiality of the Judiciary

In theory, the judiciary is independent, fair and impartial. However, based on the findings of this study, more reforms are required to enhance and sustain the independence of the judiciary.

The lack of independence is strongly linked to corruption. A judicial system, which is influenced by politics or by other factors is constantly undermined in its integrity and loses its ability to curb corruption. Curbing corruption requires a strong and independent judiciary.

Perceptions of judicial independence were more positive in those States where there was higher 'frequency of inspections' and 'frequency of performances evaluation in writing'. It is therefore recommended to enhance both the frequency and quality of court inspections and performance evaluations.

Key Recommendations to improve the judicial independence:

- The independence of the judiciary should be enforced through independent funding, whilst remuneration of Judges and court staff should be in accordance with the general public service provisions;
- Enforce meritocracy within the organization in order to reduce the importance of political influence and other non-merit based considerations in appointing judges;
- Secure precise rules and performance standards for career development and the hiring of the Judges;
- Increase public awareness regarding codes of conduct for justice sector staff and encourage courts users to report breaches of such codes;
- Introduce credible public complaints system and involve the court users in the review of public complaints;
- Ethics training for all staff to make them understand and respect the applicable codes of conduct and other regulations and rules for the correct, honourable and proper performance of their function.

5. Corruption within the Justice Sector

Corruption is not peculiar to the judiciary alone in Nigeria. Nonetheless, corruption in the judiciary may turn out to be more harmful because it could undermine the credibility, efficiency, productivity, trust and confidence of the public in the judiciary as the epitome of integrity.

Key Recommendations to reduce corruption in the judiciary:

- Judges must appreciate their roles first as public servants over and above their personal interests;
- Judges must also appreciate that their profession is a noble profession and its main tenets and epithets are integrity, transparency, honesty, objectivity, selflessness, and accountability;

- Increase accountability and performance of the justice sector through the enforcement of codes of conduct for all members of justice sector including:
 - (vii) public awareness campaign regarding how to file a complaint,
 - (viii) ethics training for all justice sector staff,
 - (ix) credible public complaints systems and advice on disciplinary action,
 - (x) complaints committees with court user to review the merits of complaints,
 - (xi) disciplinary board to discipline staff breaching the C of C,
 - (xii) Publicize complaints received and action taken;
- Reported cases of corrupt practices must be dealt with objectively, transparently and seriously in order to send the necessary deterrence signal to would-be offenders;
- Timeliness of justice delivery must be increased and monitored;
- Procedural steps must be reviewed and reduced;
- The number of adjournments needs to be managed;
- Opportunities for fraudulent behaviour by court staff must be limited, in particular, increase the awareness of court users concerning filing fees and other court related costs in order to prevent that court staff may request fraudulently inexistent “fees”;
- More intense monitoring of “corruption-prone” case types, e.g. commercial cases;
- Businesses should be made aware how and to whom they may complain to, when asked for a bribe, and warned of the consequences in case they should bribe a court official;
- Introduce criminal liability of legal persons;
- Monitor procedural steps which are particularly “corruption-prone”, this is particularly true for the application for bail, the institution of proceedings, the issuing of summons of the defendant, interrogatories and the obtaining of certified copies of proceedings;
- Educate citizens about the duties of the police and how and to whom to complain
- to in case of the violation of these duties;
- Corruption appeared less predominant in those courts where ‘judge’s performances are evaluated in writing’ more frequently, and where ‘guidelines /policies /regulations on personnel management were formalised in writing’ regularly; this suggests that performance evaluation is an effective tool for strengthening the overall discipline, accountability and transparency in the courts;
- Performance evaluation and monitoring should also be applied to court staff;
- Police officers must account for and return all case files in their possession prior to any functional or geographical transfer.

6. Others

Apart from the above specific recommendations, a Federal Action Plan for the Judiciary should be produced and published. It should contain succinct procedures for implementation within specific time frames. And, that consideration be given to greater involvement of business as a stakeholder in the judicial reform effort.

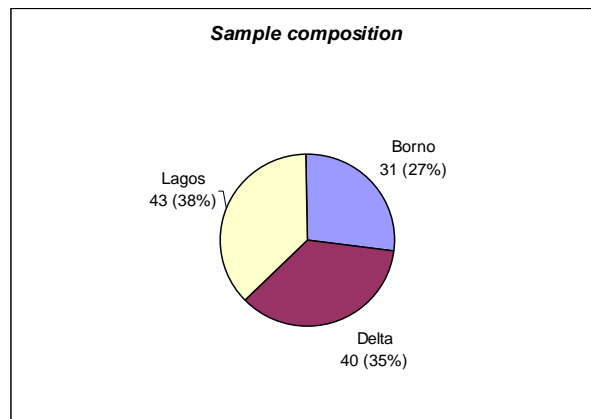
VI. DESCRIPTIVE PART

A. SAMPLE DESCRIPTION

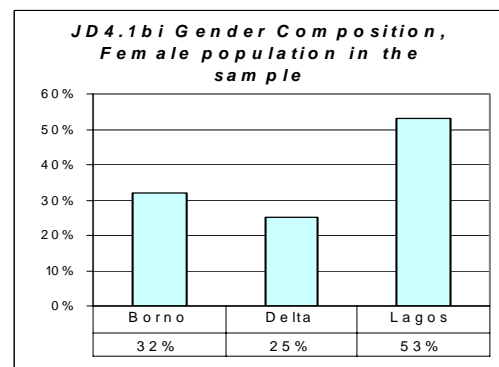
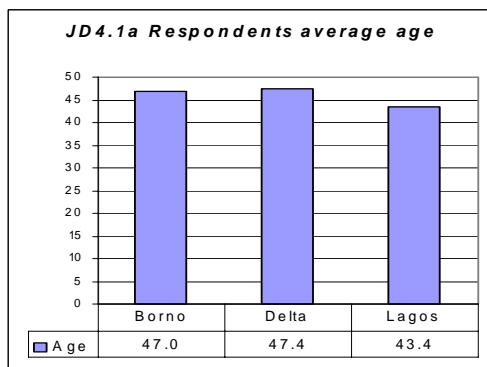
In the following the report provides a detailed description of the perceptions and experiences of Judges, Court Users, Lawyers, Business People and Prisoners Awaiting Trial. The data resulting from the interviewing of the court staff could not be used, since the absolute majority of respondents refused to answer any of those questions relating to the integrity and capacity of the justice system in Nigeria. The same applies to the data resulting from the interviewing of retired court staff. Whiel they proved more willing to respond to the “content questions” it was not possible to interview a representative sample.

1. Judges

A total of 114 Judges were interviewed in the three states: 31 in Borno (27%), 40 in Delta (35%) and 43 in Lagos (38%) as shown below⁷⁰.



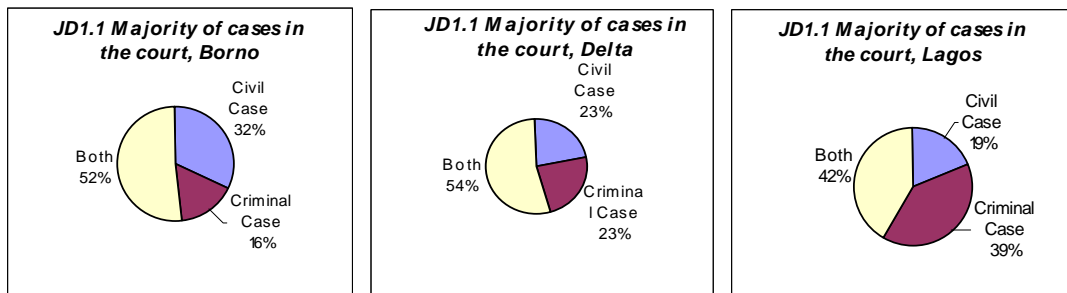
In Lagos State, on the average, respondents were four years younger than those in Borno and Delta State (see *JD4.1a*). Also, in Lagos, 66% of the respondents were female, while in the other two States, roughly only a third of the respondents were women - 32% in Borno, and 30% in Delta (see *JD4.1bi*).



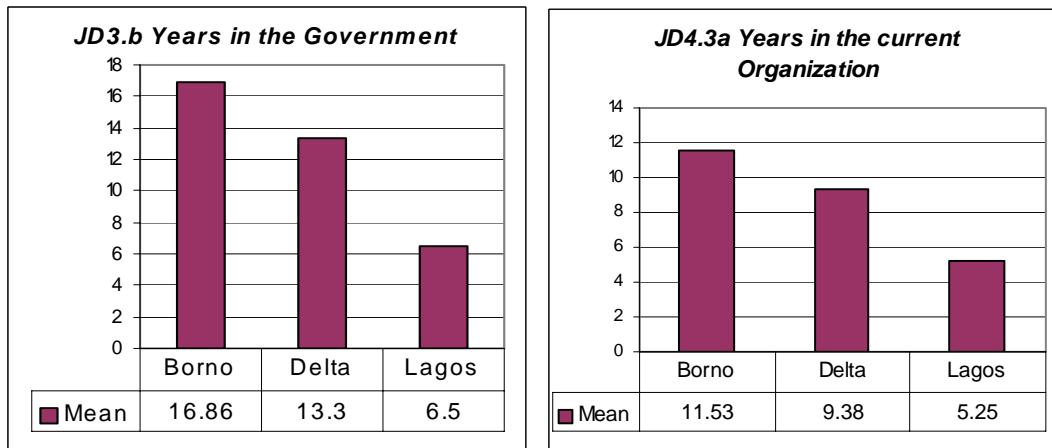
⁷⁰ All the figures indicated in the text are referred to the number of respondents to that particular question if not otherwise indicated.

The ethnic composition of the sample differed significantly between the three States, with one major ethnic group dominating the sample in each state. In Lagos, the majority of interviewed Judges were Yoruba, while in Delta, most of the respondents were Igbo (47%), and in Borno they were mainly Kanuri (41%). Other ethnicity interviewed in Borno state included Bura (10%) Chibok (10%) and Margi (6.9%). In Delta, 36% of the sampled groups belonged to the Uhrobo and an 8% Ijaw (*see JD4.1d*).

The majority of Judges interviewed, said they handle both, criminal and civil cases. In Borno State, there seemed to be little or no specialization with regard to the types of cases handled by Judges. About 52% of the respondents said they hear civil and criminal cases almost in the same proportion, while 32% handle mainly civil cases and 16% criminal cases. A similar result was obtained in Delta state, where 54% said they handle both civil and criminal cases in the same proportion, while 23% said they handle mainly civil, and 23% mainly criminal cases. In Lagos State, Judges seemed more likely to specialize on either criminal or civil cases. Only 43% of respondents said they hear both case types, while 39% said they handle mainly criminal cases and 19% mainly civil cases respectively (*see JD1.1*).

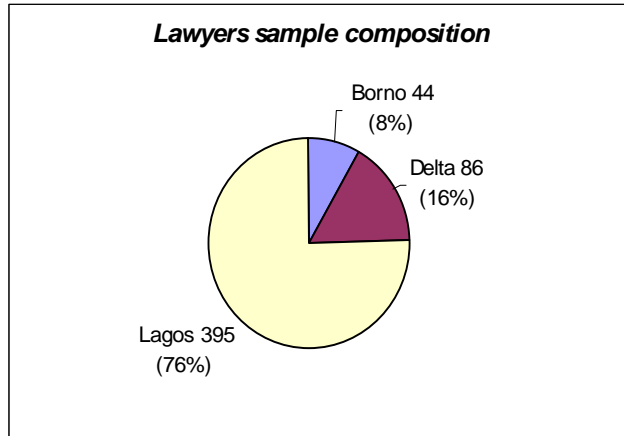


Also, as far as professional experience is concerned, the sample differs significantly across the three States. In Lagos, the respondents were by far more likely to have worked in the private sector (more than 10 years on the average) compared to Delta (6.31) and Borno (1.67) (*see JD4.3c*). Judges in Borno and Delta State are more likely to have worked for the government prior to being called to the Bench (in Borno 16 years, Delta 13 years and Lagos 6.5 (*see JD4.3b*). Also, Judges in Borno and Delta had a more extensive experience working in the courts, with 11 years in Borno and 9 years in Delta. While in Lagos state, respondents had been working as Judges on the average only for 5 years (*see JD4.3a*). Partially, this result could also be explained by the lower average age of the sample in Lagos.

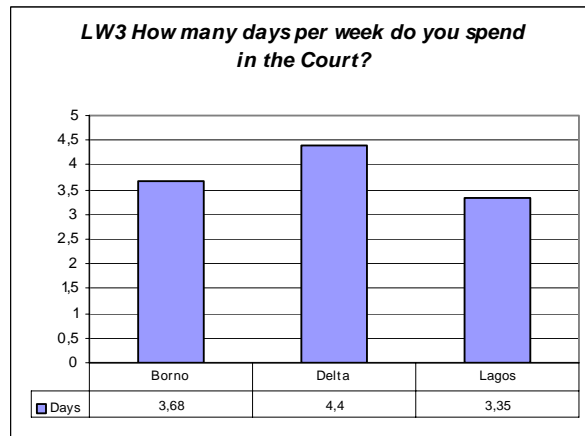


2. Lawyers

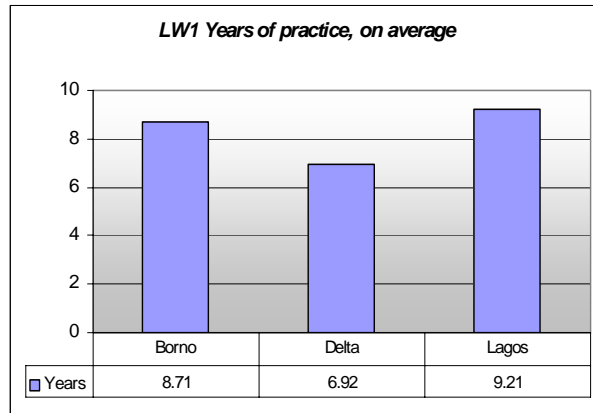
The results of the Lawyers' survey were based on a sample of 525 Lawyers, including both defense attorneys and Prosecutors working for the Office of the Attorney General. In the case of the Lawyers, the sample is not equally distributed across the three States, which is mainly due to the fact that the majority of Private Attorneys practice out of Lagos State, which accounts for approximately 50% of the total case load of Nigerian courts. More specifically, 395 Lawyers were interviewed in Lagos State (75.2%), 44 in Borno state (8.4%) and 86 in Delta State(16.4%).



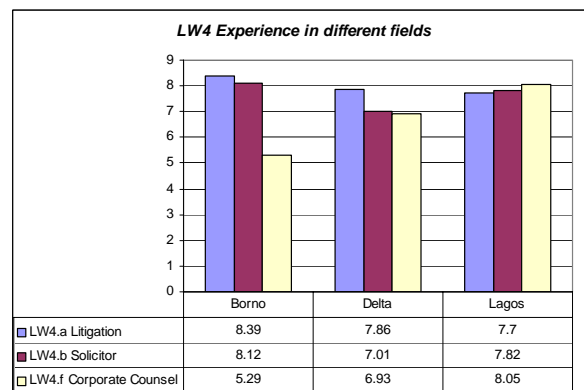
On the average, Lawyers in Delta tend to go to court more often than their colleagues in Borno and Lagos. More specifically, in Delta state, the respondents go to court almost every day (4.4 days), while in Borno on the average, they go 3.68 days to court and in Lagos 3.35 days (*seeLW3*).



Lawyers in Lagos with 9.2 years tend to have more professional experience than their colleagues in Borno with 8.7 years and in Delta with 6.9 years (*SeeLWI*).

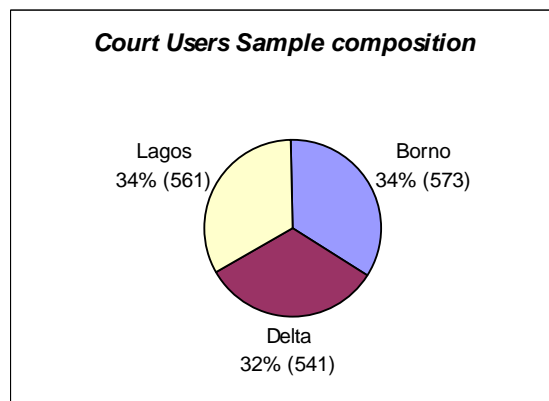


As far as their professional experience in different fields is concerned, all respondents have been working both, in litigation and as solicitors. The main difference: respondents from Lagos State, unlike their colleagues from Delta and Borno, have extensively worked as corporate counsels.



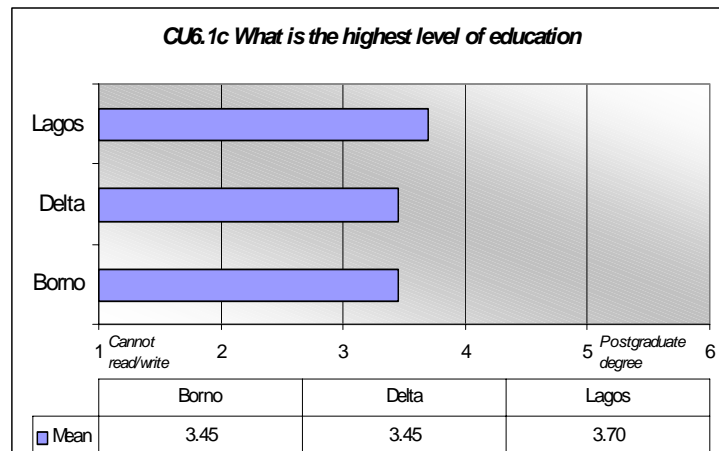
3. Court Users

A total of 1675 court users were proportionately interviewed across the three states: 573 in Borno, 541 in Delta and 561 in Lagos.

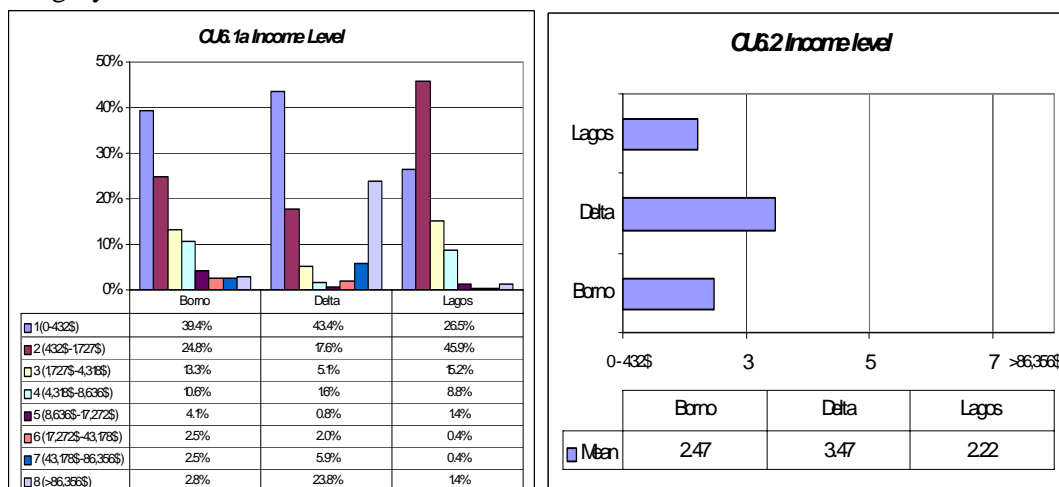


The basic characteristics of the sampled population were fairly homogenous across the three states. The average age of the respondents was 36 in Borno, 43 in Delta and 40 in Lagos (*see CU6.1a*). About 80% of the court users interviewed in Delta were male, while the male

proportion of interviewees in Borno was 75% and 67% for Lagos State. On a scale from 1(=low level) to 6(=high level), the average education level of respondents was between 3 and 4, which corresponds to a 'general' or 'specialized' secondary school (see CU6.1c).



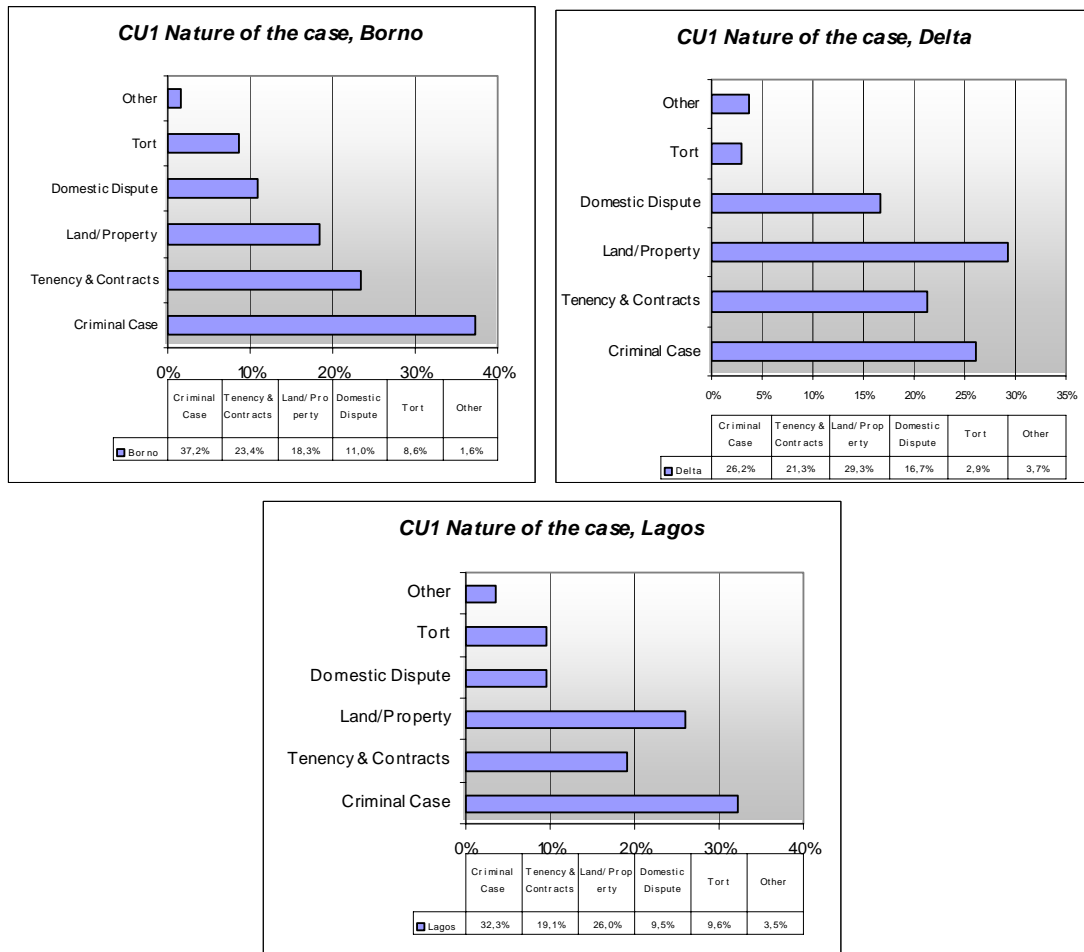
The income levels of the respondents are relatively low with the majority of the respondents (more than 60%) in all the States earning less than US \$ 1727 (see CU6.1e). In comparison, court users in Delta State showed a higher income inequality compared to those in Lagos and Borno. About 25% of the population sampled in Delta State were people of modest economic circumstances, while in Lagos and Borno States, only 2-3% of the sampled population fell into this category.



The ethnicity of court users does not correspond to the one of Judges, and is by far more distributed across various ethnic groups. In Borno State, for example, the sample was much more fragmented; the main ethnicities are: Kanuri (26,3%), Hausa (18.9%), Fulani (9.9%), Shuwa (6%) and Igbos (5%), the rest of the sample was distributed among more than 20 other ethnicities (see Q6.1e). In Delta State, majority of court users were Igbo (41,6%), or Urhobo (23.5%) (see CU6.1e). In Lagos, 46% of the respondents were Yoruba, followed by 26.6% Igbo, 7.4% Hausa and the remaining 20% were distributed among 15 other ethnicities (See CU6.1e).

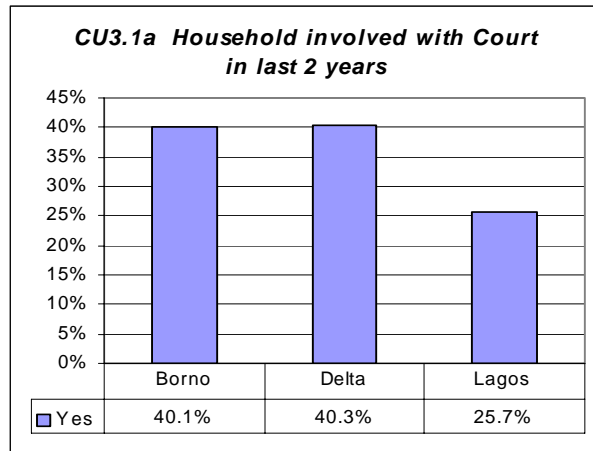
When asked about the 'nature of the case', which brought the interviewee to the court, some slight differences emerged in respondent's opinions in the three states. However, overall, the relative majority of respondents (32%) were that day in court in connection with a criminal case,

with the highest percentage in Borno state (37%) and the lowest percentage in Delta state (26%). Other frequent reasons for coming to court include disputes relating to tenancy and other contracts, disputes over land and property and ‘domestic disputes and divorces’ (see CU1).

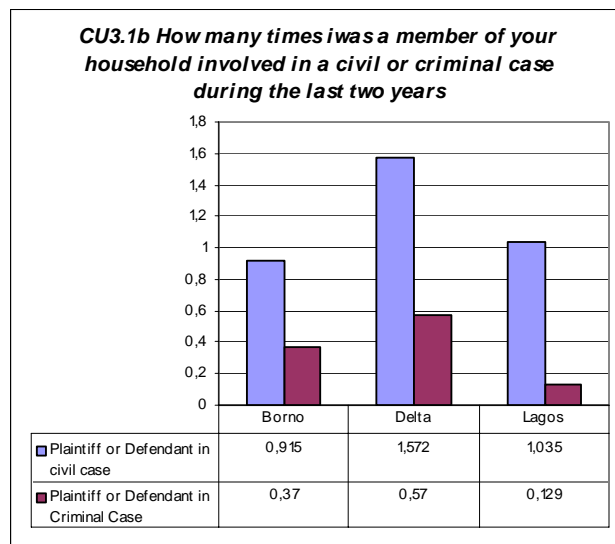


Respondents were also asked whether any member of their household had been involved in a dispute of any kind during the last two years. Their responses showed that the lowest number of relatives' involvement in disputes was in Lagos⁷¹ with (25.7%), followed by Borno with 40.1%, and Delta with 40.3% (see CU3.1a).

⁷¹ Being a cosmopolitan city, avenues for resolving conflict among neighbours are rare since they probably belong to different ethnic groups, religions or tribes.

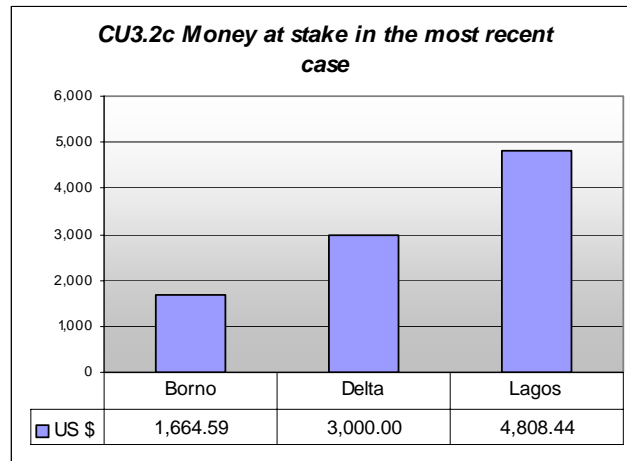


When asked how often a member of their household had been involved in a criminal or civil case, during the last two years prior to the interview, the responses showed that in Delta State, on the average, a household had been involved 1.5 times in a civil case; while in Borno and Lagos State, this value decreased to 1. A similar trend was observed with regard to criminal cases. In Delta State during the last two years members of the same household were involved 0,57 times in a criminal case, followed by Borno with 0,37 times and Lagos with 0,129 times.



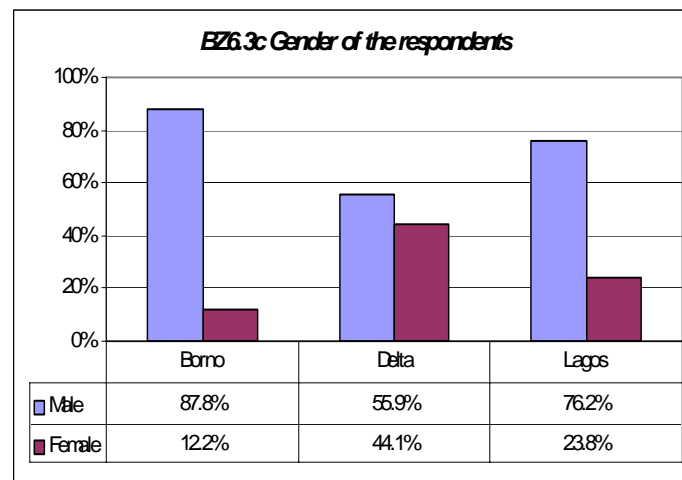
Court users were also asked about the money at stake in their last dispute. While income levels of court users seemed relatively homogenous across the three States, the average amounts at stake in the last court case differed significantly with US\$ 4,808 in Lagos, US \$ 3,000 in Delta and US \$ 1,600 in Borno)⁷².

⁷² The market exchange rate at 2/5/02: 1US\$ = 129.752NGN



4. Business People

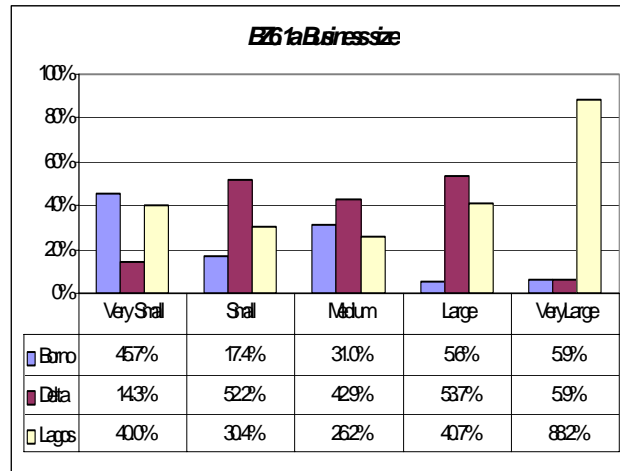
Unlike the court user survey, the business survey was not conducted as court exit interviews. A total of 156 Business People were interviewed in Lagos, 80 in Delta and 43 in Borno. In Delta State, 44% of the respondents were women, while in Lagos and Borno State, the relative number of businesswomen was considerably lower, with 23.80% and 12.20% respectively (*see BZ6.3c*).



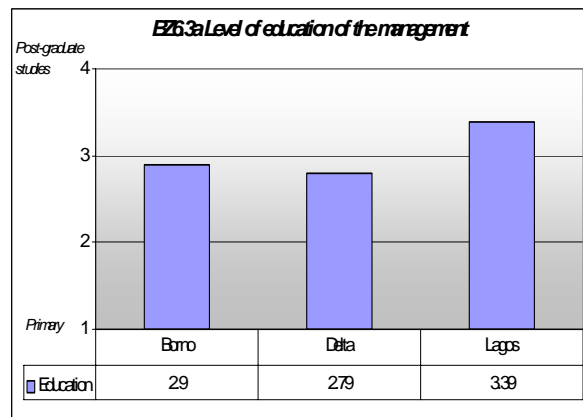
Also, the ethnic distribution of business people differs from the one of court users. In Borno State, the majority of interviewed business people were Kanuri (28.6%), followed by Fulani (14.3%) and Shuwa-Arabs (14.3%). In Delta State, about 50% of the respondents were Igbo, and 18% Yoruba, while the remaining sample belonged to other 10 ethnic groups. In Lagos state, the respondents were mainly Yoruba (40.6%), followed by Igbo (13%) and Hausa (7%). (*See BZ6.3b*).

The size⁷³ of the businesses participating in the survey varied across the three States, with the highest concentration of very small businesses (= 4 or less employees) in Borno State, of medium size companies in Delta State, and of very large companies in Lagos States.

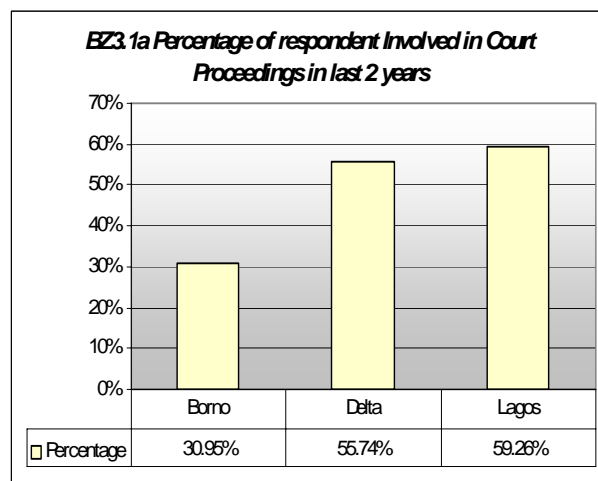
⁷³ We divided the sample in 5 classes according to the number of employees. The classes were defined in order to have a normal distribution of the sample. Very Small are companies with 4 or less employees. Small companies have between 4 and 10, Medium have between 10 and 30, Large companies have between 30 and 700, while very large companies have more than 700 employees.



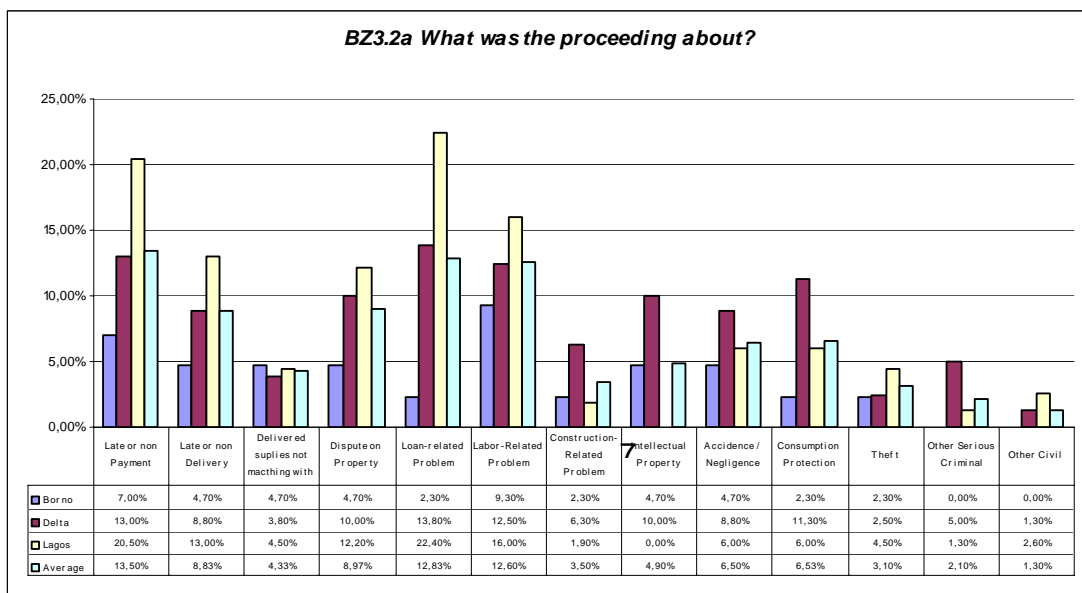
As for the level of education, managers in Lagos States tended to have higher levels of education than in the other two States (see BZ6.3a).



Except for Borno State, the majority of respondents had interacted with the justice system during the last two years. More specifically, 60% of the respondents in Lagos and 56% in Delta had been in contact with the courts, while in Borno state only 30% of the interviewed business people have had such an experience (see BZ3.1a).

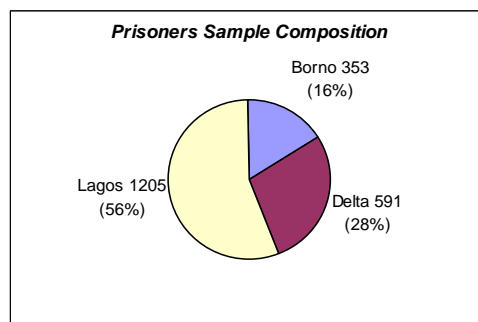


In Lagos State, about 38% of the respondents had used the courts for solving ‘loan related disputes’, 35% for payment-related disputes, 28% for ‘labor related problems’ and 20% had gone to court in connection with ‘disputes over property’; while problems relating to ‘late or wrong delivery, negligence or consumer protection were less relevant. In Delta State, ‘loan’ and ‘labor’ related disputes were the most frequent reasons for which the respondents - 23% and 20% respectively - had been involved with the formal justice system during the last two years. Moreover, in comparison to the other two States, in Delta, business people seemed more likely to get involved with the justice system in connection with serious criminal offences. Other reasons included legal problems relating to construction, intellectual property, and negligence and consumer protection. In Borno, most of the legal disputes originated from ‘labor related problems’ (27%) or from delayed or refused payments for services and goods (20%) (see BZ3.2a).

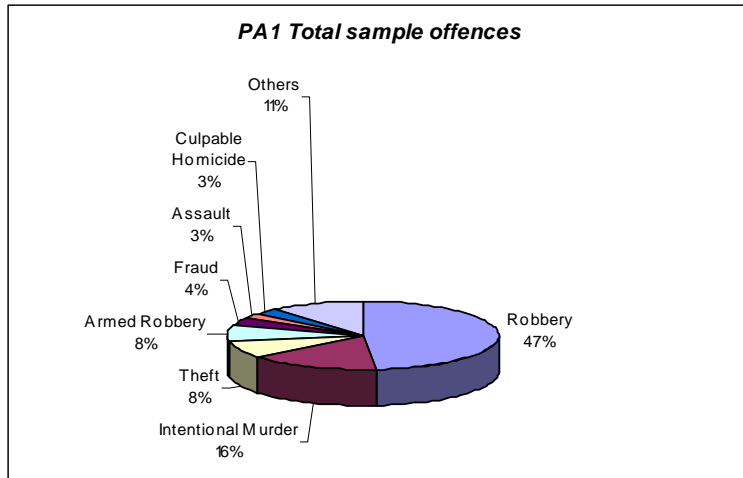


5. Prisoners awaiting trial

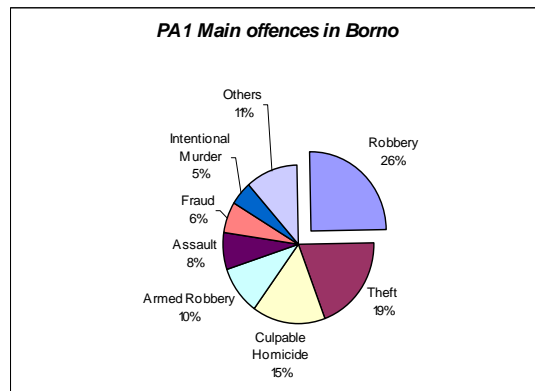
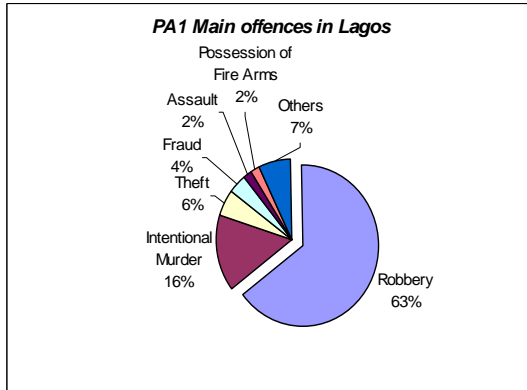
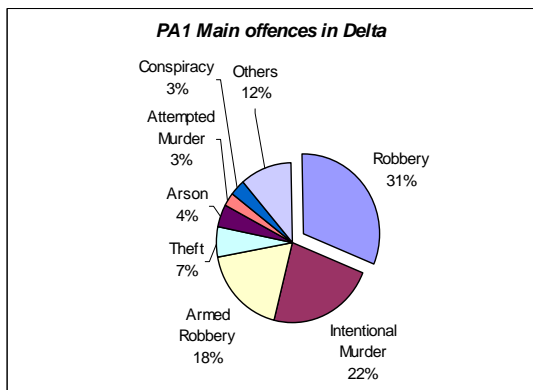
A total of 2149 Prisoners awaiting trial were surveyed. 1205 were interviewed in Lagos (56%), 591 in Delta (28%), and 353 in Borno (16%).



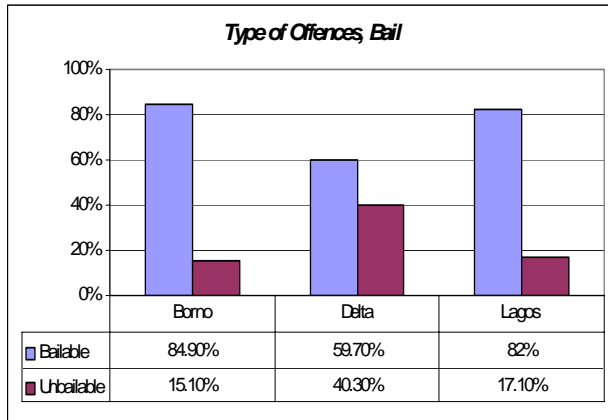
The main offences allegedly committed by respondents included robbery and intentional homicide, followed by armed robbery and theft (See PAI).



A stratified comparative analysis of the offences in all three States shows that most of the prisoners were awaiting trial for robbery offences. However considerable variations could be observed with regard to the percentage of prisoners awaiting trial for other offences. In Borno State a relative high percentage of the respondents (19%) was awaiting trial for theft, while this percentage was by far lower in Delta (6,6%) and in Lagos State (5,6%). In Lagos and Delta intentional homicide was, after robbery, the second most common crime - 32,5% and 15,7% respectively - for which alleged offenders were awaiting trial in custody (*see PAI*).



More than 80% of the respondents in Lagos and Borno states were found to be awaiting trial for bailable offences.

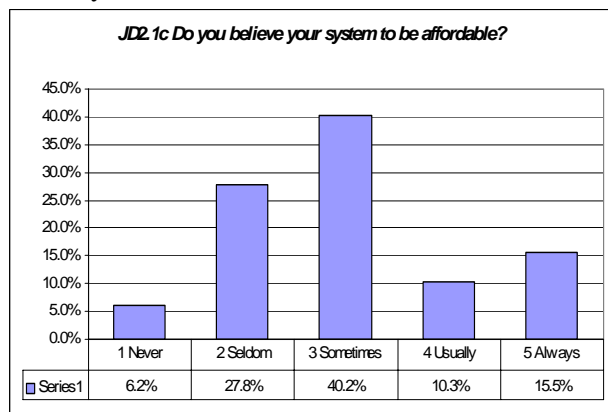


B. ACCESS TO JUSTICE

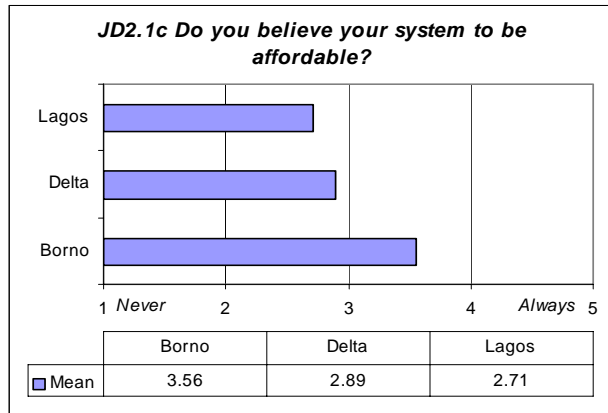
Access to justice is conditioned by multiple aspects, including the quality, timeliness and affordability of justice delivery. Access to justice, however, equally depends on the citizens' awareness of their rights and the legal means and avenues that may be used in their defense against intrusions by the State and fellow citizens, as well as the public's trust in the justice system to uphold the rule of law.

1. Judges

Judges were asked to evaluate the affordability of the justice system on a scale ranging from "never" to "always affordable" in their respective States. Most respondents were of the opinion that the justice system was only sometimes or seldom affordable.

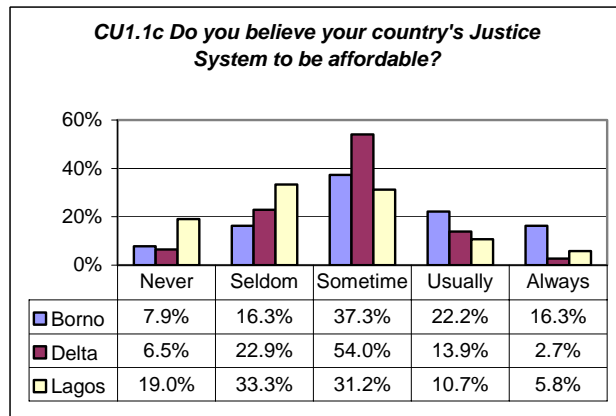


A comparative State-by-State analysis of the data shows that Judges in Borno retained the affordability much higher than in Delta and Lagos (*See JD2.1c*). Presumably because court fees have not been reviewed in Borno state for sometime, while in Delta and Lagos court fees had been increased more recently.

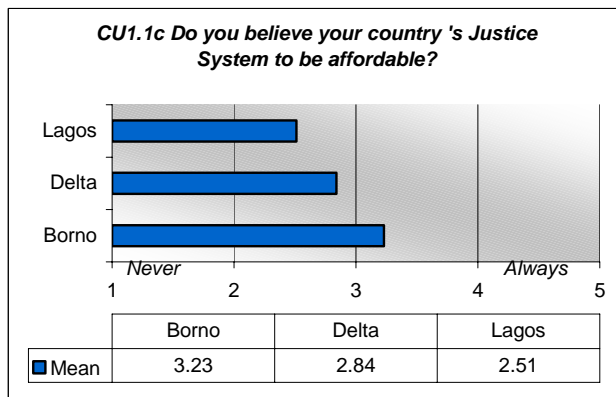


2. Court Users

The affordability of the justice system is key for the access to justice. It is interesting to observe that the opinions of court users and Judges on the affordability of the justice system correspond more or less with each other, with the majority of the respondents believing that the court system was only sometimes or seldom affordable.



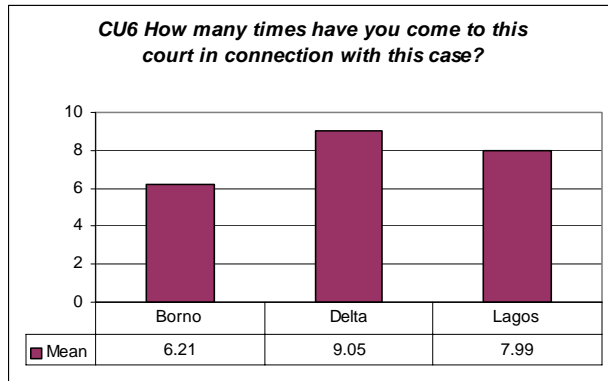
In comparison, the court users perceived the justice system in Delta to be slightly less affordable than in Lagos and Borno (*see CU1.1c*)



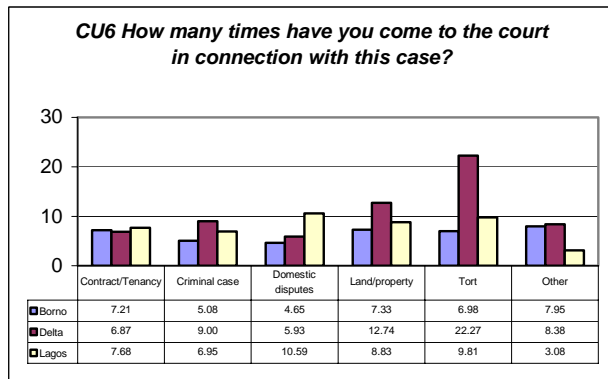
Court fees are not the only factor determining the accessibility of the justice system. Overly lengthy proceedings may also impede citizens from seeking solutions through the formal justice

system. The length of the proceedings hinders access to justice in two ways. On the one hand, it increases costs e.g. in terms of transportation and non-productive time. On the other hand, lengthy proceedings may frustrate complainants and induce them to seek either informal solutions or to simply not defend their rights at all.

On the average in Delta, court users had to come to court 9 times for the same case, while in Borno state, respondents came only 6.21 times, and in Lagos 8 times. In this context, it is important to observe that the number of hearings it takes in order to resolve a case, has quite a different significance in the three States. In Borno, the largest State among the three, where the geographical coverage of the territory with courts is very low, the chances of having to come back to court puts a considerably heavier burden on court users than in Lagos, a city state where transportation is less of a problem.

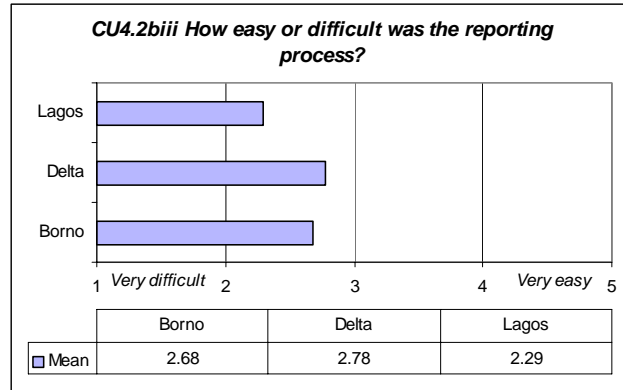


In Delta State, the number of hearings required to resolve a case was higher than in the other two States. In particular, contract and tenancy related disputes seem to require an unusually long time to resolve. The same could be observed for cases relating to domestic disputes in Lagos (*seeCU6*).

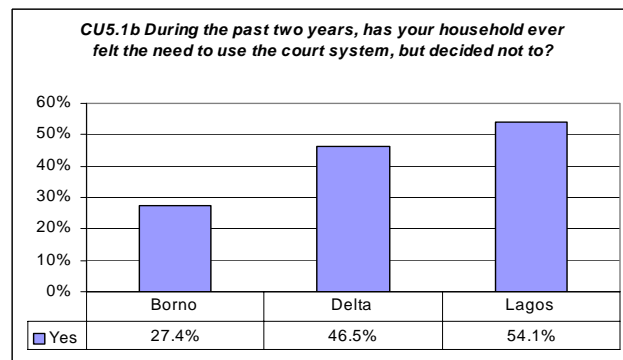


Still on the issue of length of the proceedings and number of times needed for cases to be concluded, about 25% of respondents in Borno answered that their cases were concluded on the day of the interview; while in Delta and Lagos, the percentages of cases concluded on the day of the interview were with 12.2% and 6.9% considerably lower (*seeCU4*). The absence of Judges or Lawyers was mentioned as the principal reasons for the frequent adjournments of cases in Delta and Lagos states.

Access to Justice is further dependent on the availability of basic information, the complexity of procedures and the responsiveness of some service providers. When asked to indicate on a scale from 1 to 5, with one being "very difficult" and five being "very easy" how easy it was to report to the Police, respondents rated the reporting process with 2.29 as most complex in Lagos, followed Borno with 2.68 and Delta with 2.8 (see CU4.2biii)⁷⁴.

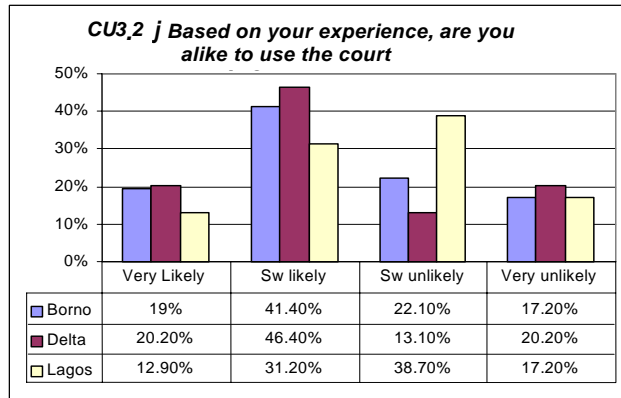


As a result of the above described problems, court users could feel less inclined to use the formal justice system. When asked if in the past, they felt the need to go to the court but decided not to do so, 27.4% of the respondents in Borno answered 'yes', while 46.5% and 54.1% of respondents in Delta and Lagos respectively, seemed less likely to use the courts, even when they needed to (see CU5.1b).

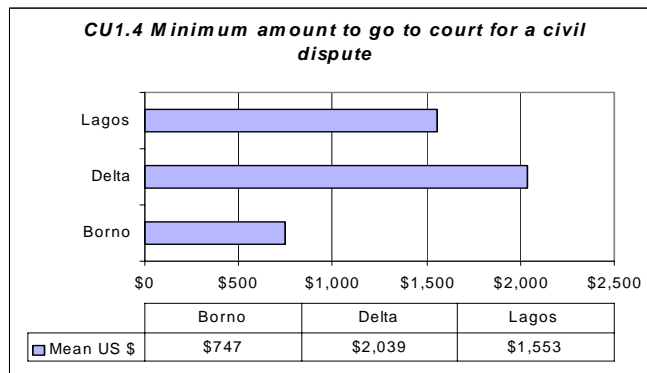


Court users were further asked, if they would use the courts again given their previous experience. Here, it is interesting to observe that in Lagos, the highest percentage of the respondents (55%) were "unlikely" or "very unlikely" to use the courts again. While in Borno and Delta more than 60% of the respondents indicated that it was "somewhat likely" or even "very likely" that they would use the courts again.

⁷⁴ The complexity of the reporting process could involve the proximity to the police station or court and the preliminary interrogation that the complainant may be subjected to. Sometime, this could be a disincentive for reporting crime cases.

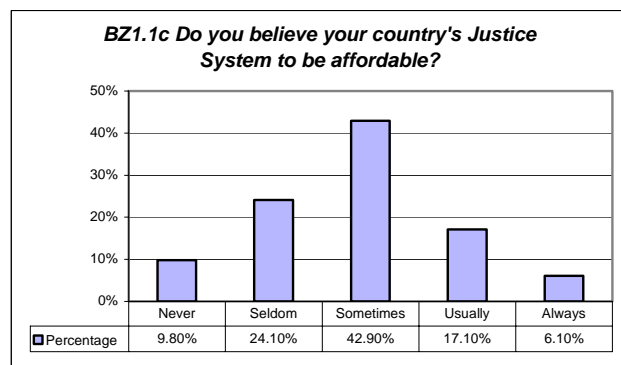


In general, it appears likely that, where access to justice is more difficult, the money at stake should be higher for respondents to take it upon them to seek a solution through the formal justice system. Therefore, court users were asked what minimum amount had to be at stake for them to seek dispute resolution through the formal justice system. It turned out that in Borno State the minimum amount that had to be at stake was significantly lower than in Delta or Lagos. However, these differences may find their explanation rather in the diverse economic conditions in the three States, than in the accessibility of their respective justice systems.

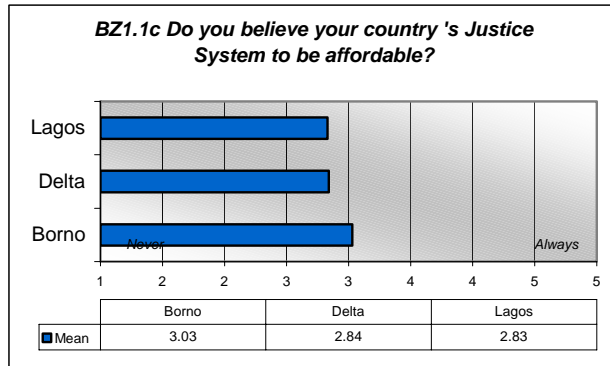


3. Business People

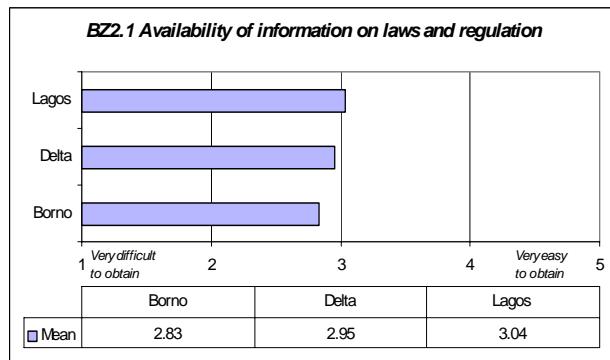
In general terms, business people seem to confirm the views expressed by court users and Judges on the affordability of the justice system, with the majority of the respondents believing that the court system was only sometimes or seldom affordable.



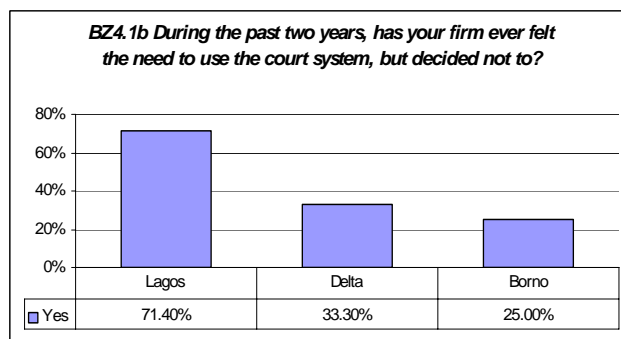
A comparative analysis of the perception of the affordability across the three states, shows that respondents in Borno were of the opinion that access to justice was slightly more affordable than in the other two states.



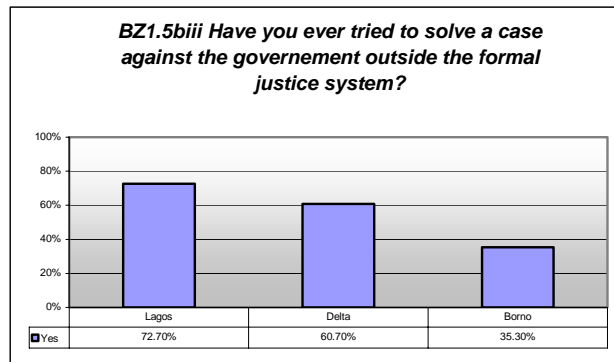
With regard to the availability of basic information, the complexity of procedures and the responsiveness of some service providers, business people were asked to indicate the difficulties encountered when trying to access laws and regulations that could affect their companies. In this context, no significant differences were discovered, with the respondents describing the access to laws and regulations on the average as neither difficult nor easy.



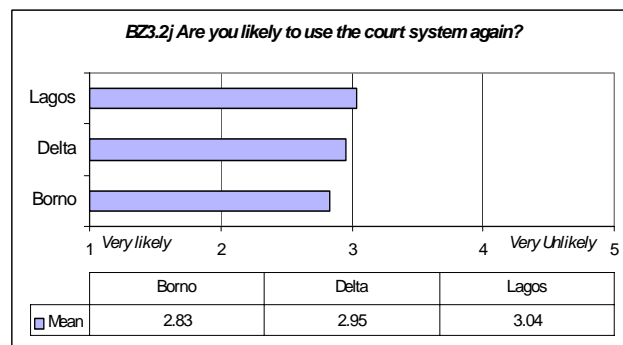
The business people were also asked, if in the past they had felt the need to go to the court but decided not to do so as a result of the problems hampering access to justice. In Borno only 25% of the respondents had refrained from accessing the formal justice system, when they needed to, while in Delta and, especially Lagos, this ration was considerably higher, with 33% and 71,4% respectively.



However, on a more positive note, it can be said that the readiness of business people to use the formal justice system does not seem to depend on whether the respondent to their claim is a private citizen, another business or the government.



While the prior two questions indicated rather different levels of accessibility of the justice system across the three States, the responses to the following question suggest that the justice sector institutions in all three States perform equally well, when it comes to fulfilling the expectations of businesses, with the majority of respondents being neither likely nor unlikely to use the courts again based on their last experience with the courts (*see BZ3.2j*).



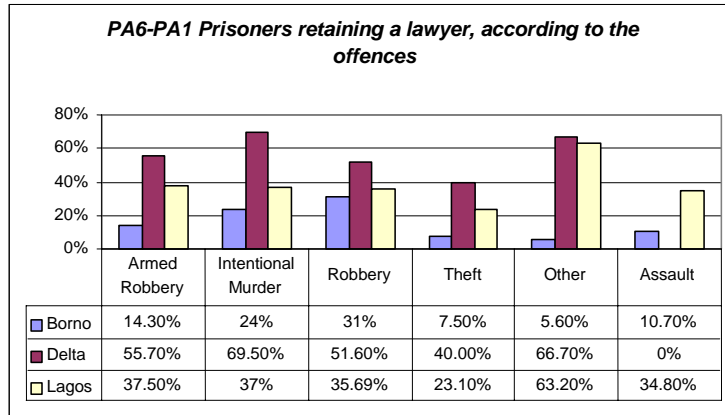
Business people were further asked about the minimum amount that had to be at stake in order for them to seek dispute resolution through the formal justice system. Like it had been the case for the court users, the minimum amount, which had to be at stake for the respondent in Borno in order to use the courts again, with US \$ 1,665 was considerably lower than in the other two States (US \$ 2,218 in Lagos and US \$ 2,433 in Delta; *see BZ1.4*).

4. Prisoners awaiting trial

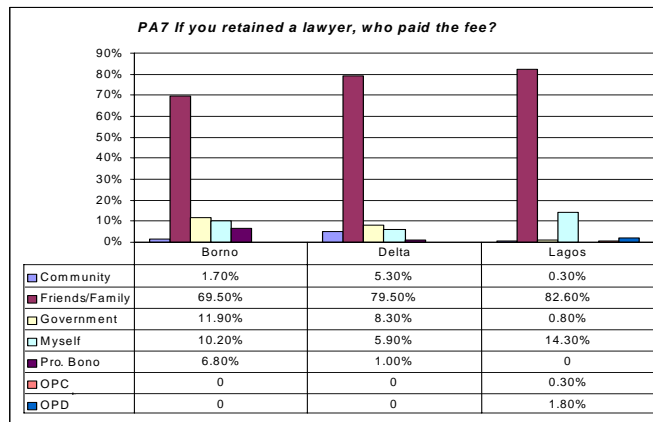
Prisoners face very specific problems regarding access to justice. Among the many factors perhaps the two most essential components of access to justice from their perspective are if they have retained a Lawyer and if they are aware of and have been given the possibility to apply for bail. Prisoners awaiting trial were asked questions on both aspects.

The results show that only 38% out of the total sample had retained a Lawyer, with percentages varying significantly among the three States. In Delta State, 54% of the respondents had retained a Lawyer, while in Lagos 35%, and in Borno only 17% had a Lawyer (*See PA6*). A further analysis revealed that these results were only slightly influenced by the differing crime structures

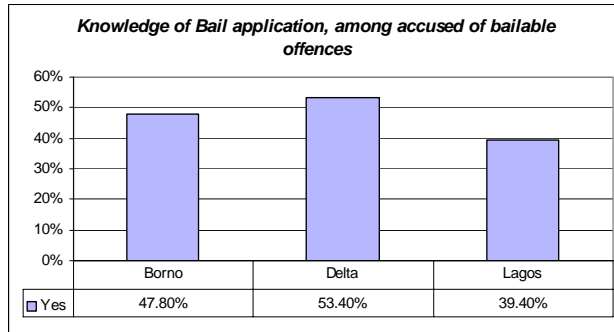
in the three States. Generally, prisoners awaiting trial in Borno States had been by far less likely to have retained a lawyer (*See PA6-PA1*).



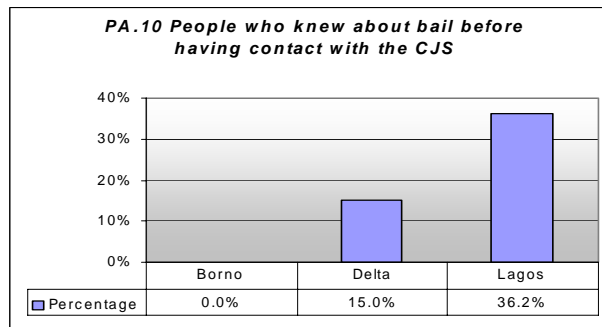
The single most important source providing for Lawyer fees is the social network of the prisoners. In 70% - 80% of the cases, respondents indicated their Lawyer fees were paid by their family or friends. On the average, only around 10% of the respondents had been able to pay their Lawyer fees themselves. As for the remaining sample, except for Lagos, most Lawyer fees were paid either by the Government (Legal Aid or Office of the Public Defender) or Lawyers did not charge fees (pro bono). Except for Delta state, it is also important to note that the community as such, does hardly play any role in financing Lawyer fees of its members.



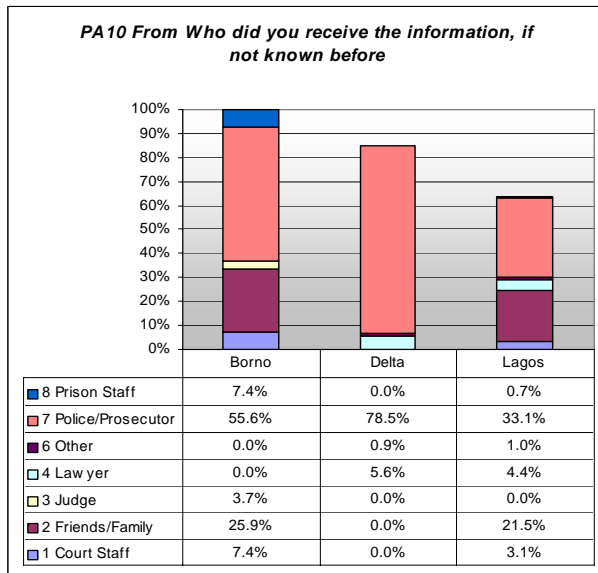
When asked if they were aware of the possibility to apply for bail, it turned out that in Delta State, 51.8% of the Prisoners claimed to be aware of the possibility and conditions of applying for bail, followed by Borno State with 47.6%, and Lagos state with 36.4%. This trend does not change, when only taking into account those prisoners who had allegedly committedailable offences (*seePA8*).



The survey also explored the sources of information for bail available to prisoners. It was found that in Lagos, 37% of the respondents had known already about bail conditions before they came into contact with the criminal justice system. In Delta only 15% said they had been aware of the possibility and conditions of bail before their arrest, and in Borno almost all the respondents had been ignorant about the conditions and procedures of bail prior to coming into contact with the criminal justice system. (SeePA10).



For those who had learned about bail conditions only after their arrest, the police and prosecutors emerged as the most important source of information, followed by family members and friends.



Also, prisoners awaiting trial were asked whether they had been given possibility to apply for bail. It turned out, that in Delta and Lagos State approximately half of the respondents had been

given the opportunity to apply for bail (50% and 46,2%), while in Borno only 36,4 % indicated that they had been given this chance (*seeCU4.2div*).

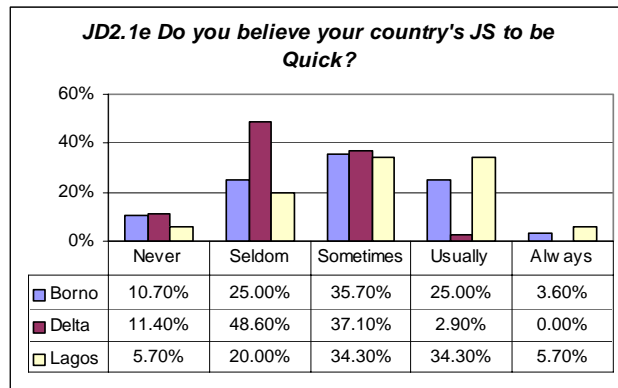
C. TIMELINESS AND QUALITY OF JUSTICE DELIVERY

1. Judges

The Judges' survey included questions relating directly or indirectly to the effectiveness and efficiency of the court. Respondents were asked both about their general perceptions of the timeliness and quality of the services provided by the courts, as well as experiences and objective factors, such as the level of computerization, and the existence of clear procedural guidelines.

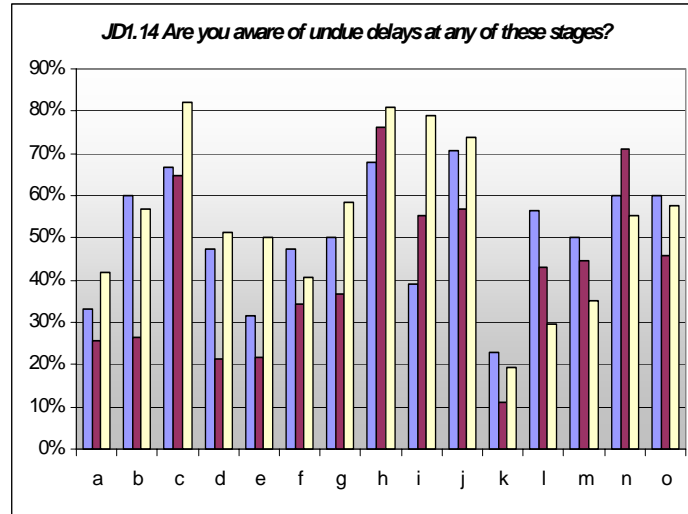
a) Timeliness

Judges' perceptions regarding the timeliness of the dispensation of justice differed significantly among the three States. In Delta State, respondents evaluated the efficiency of the justice delivery more negatively, with more than 80 % agreeing that justice delivery was only seldom or sometimes quick enough, while in Borno State, most of the respondents agreed that justice delivery was either sometimes or usually quick enough. Efficiency was evaluated most positively in Lagos, where more than 40% of the Judges were of the opinion that justice delivery was always or usually quick enough.



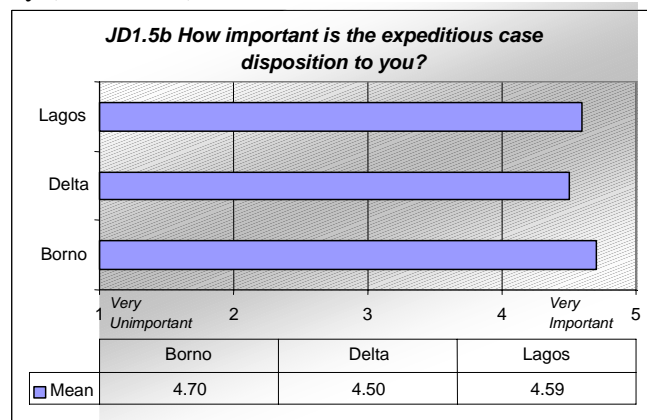
Judges were also asked to clarify whether they felt that the time to dispose a case was too long or too short for the interest of justice. In this regard, respondents in all the three States agreed that the time it took was either appropriate or too long in the interest of justice, while none of the respondents was of the opinion that the length of the trial process had been too short in the interest of justice.

Delays can occur at all stages of the justice process, from the filing of the case to the enforcement of the court decision. The survey, therefore tried to further determine at what stage of the justice process delays typically occur. It turned out that of the respondents had experienced undue delays in particular during the 'trial proceedings', the 'servicing of summons of witnesses and of defendants'. Very frequent were also delays in the commencement of the trial, the transmission of court records to the court of appeal and execution of the judgment (*seeJDI.14*).



<i>a</i>	<i>Institution of Proceedings</i>
<i>b</i>	<i>Issue of Summon Defendant</i>
<i>c</i>	<i>Service of Summon Defendant</i>
<i>d</i>	<i>Discovery of Documents</i>
<i>e</i>	<i>Interrogatories</i>
<i>f</i>	<i>Implementation of Bail Order</i>
<i>g</i>	<i>Issue of Summons of Witness</i>
<i>h</i>	<i>Service of Summons of Witness</i>
<i>i</i>	<i>Commencement of Trial</i>
<i>j</i>	<i>Trial Proceedings</i>
<i>k</i>	<i>Delivery of Judgement</i>
<i>l</i>	<i>Obtaining Copy of judgement</i>
<i>m</i>	<i>Obtaining Certified Copy of Proceedings</i>
<i>n</i>	<i>Transmission of Court Records to Appeal Court</i>
<i>o</i>	<i>Execution of Judgement</i>

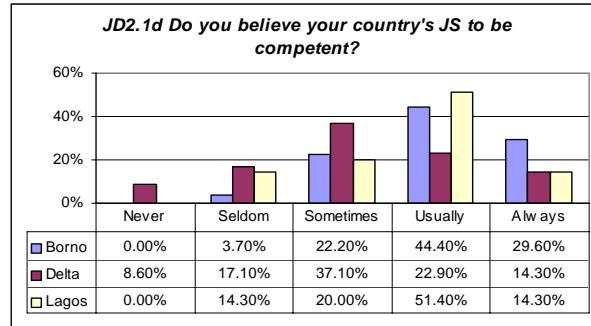
Also when comparing with other factors relating to the functioning of justice delivery, respondents assigned great importance to expeditious case disposition in all the three Ttates. Indeed, the majority of the respondents perceived quick action on cases as the most important factor in justice delivery (See JD1.5b).



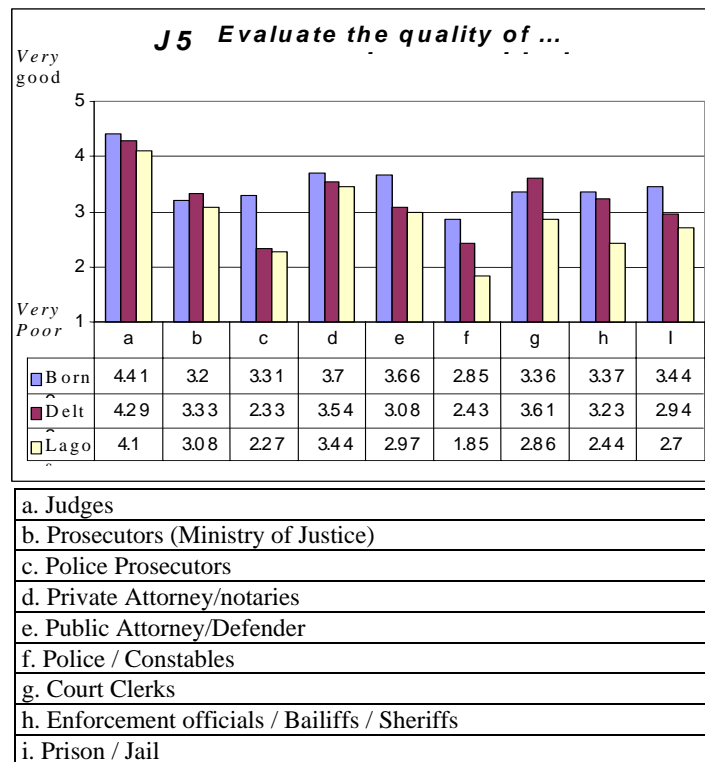
When asked how important they considered the establishment of a maximum time for each procedural step by law, on the average 57% of the respondents across the three States agreed that this would be a very important measure.

b) Quality

Not surprisingly, Judges generally evaluated the services provided by the courts more positively than court users, lawyers and business people. When asked to assess the competence of their profession on a scale from 1 (=never) to 5 (=always), on the average in all three States judges agreed, that this was usually the case (*see JD2.1d*).

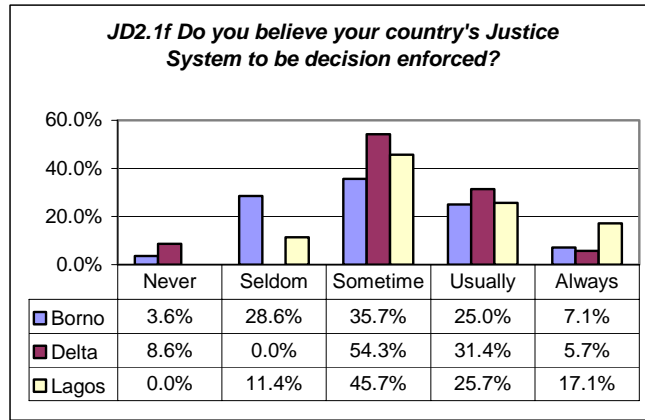


Furthermore, Judges were asked to evaluate the quality of the services provided all the actors in the justice system. On a scale from 1 (=Very Poor) to 5 (=Very Good), on the average the services of judges were evaluated most positively followed by those of private attorneys, public attorneys and court clerks; while at the same time the services of the police, police prosecutors and bailiffs were judges most negatively (*see JD5*).

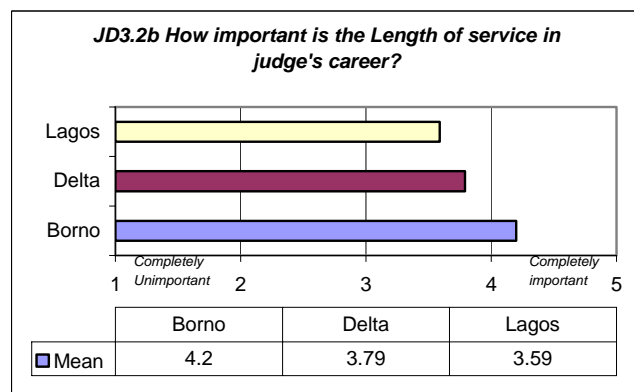
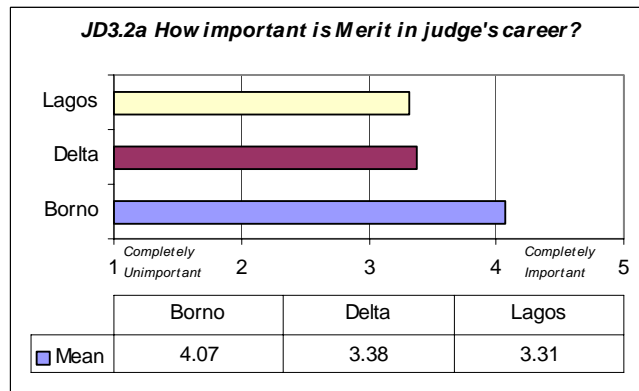


Enforcement of court decisions is one of the element that greatly affects the perception of the quality of justice delivery. Judges were therefore asked whether they believed that their decisions were enforced. It turned out, that between 35-40% shared the opinion that court decisions are

always or usually enforces, while between 35 and 55% believed that this was only sometimes the case. Particularly preoccupying was the result in Borno where more than 30% believed that court decisions were either seldom or never enforced. (*see JD2.1f*).

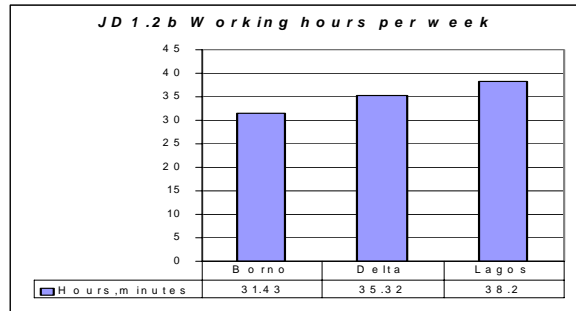


The survey also explored respondents' perception with regard to the relevance of merit in Judges' appointments. Especially in Borno State, judges agreed that merit and length of service were of great importance for the appointment and career of judicial officers (*see JD3.2a*).

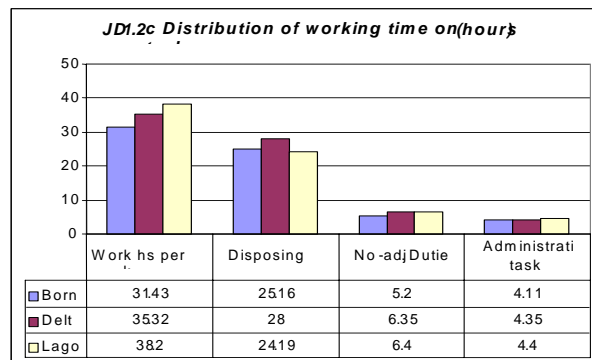


Political connections were perceived as less important. However, in Delta and Lagos State, political connections were perceived as important as length of the service for the appointment to the bench and the following career development (*see JD3.2d*).

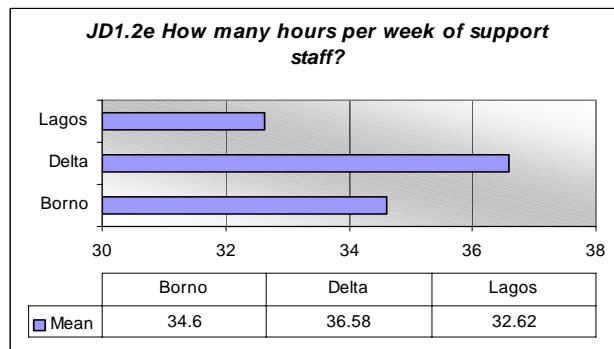
Furthermore, the survey explored the number of judges' weekly working hours. It emerged that Judges in Lagos work the longest hours, with an average of 38.3 hours/week, followed by Delta with 35.5 hours/week, and Borno with 31.7 hours/week (*see JD1.2b*).



The statistics show that Judges devoted most of their time to the disposing of cases, while relatively little time is used for non-adjudicative or administrative tasks.

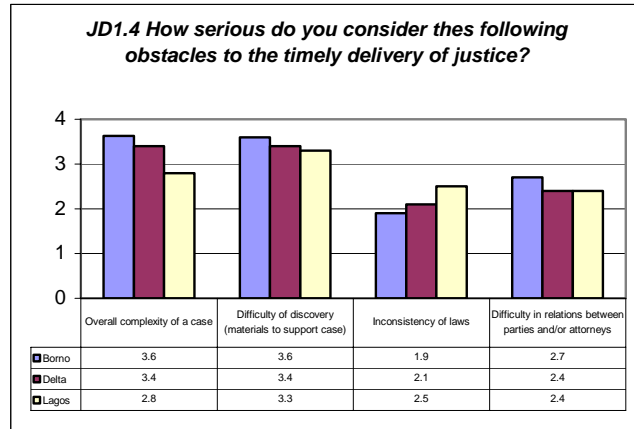


The survey further revealed that judges in Delta States have the highest number of support staff at their disposition (8 support staff/ judge, compared with Borno with 6.32 support staff per judge and Lagos with 3.38 support staff per judge (*see JD1.2d*). On the availability of the support staff to assist the Judges in terms of working hours, Delta state again rated higher than the two other states (*see JD1.2e*). Regardless of the greater availability of support staff, both in terms of the number of staff per judge and of number of hours they assist Judges, Judges in Delta seemed to spend more time on non-adjudicative and administrative tasks than their colleagues in Borno and Lagos.

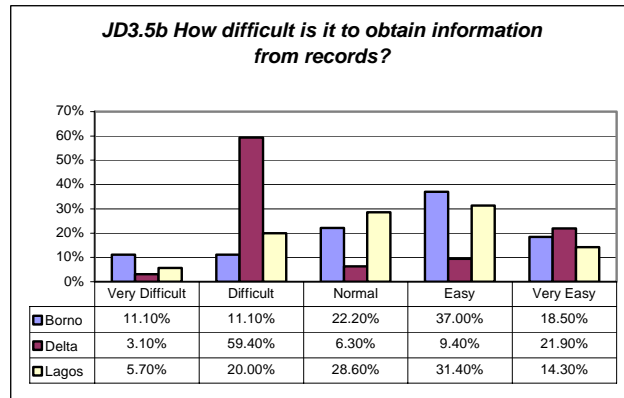


When it came to evaluating the impediments, both to timeliness and quality of the trial process, Judges in all the three states essentially agreed, that the most serious obstacle was the 'difficulty

to find material to support the case’, followed by the ‘overall complexity of the case’; while “inconsistencies in the law” was perceived as a minor problem (*SeeJD1.4*).

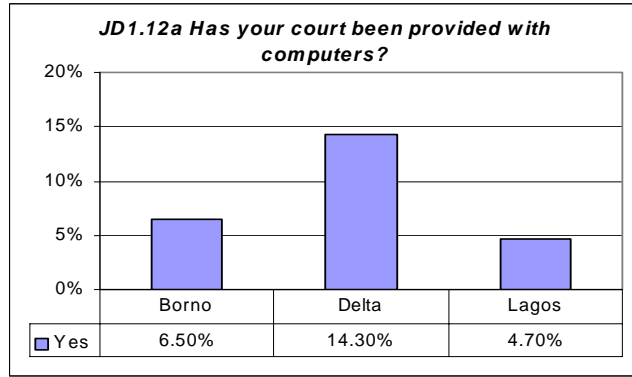


Also, information management in general seems a problem. About 25% of the respondents in Borno and Lagos found it very difficult to obtain information from records, while this percentage rises to 62% among the respondents in Delta (*SeeJD3.5b*). This was further confirmed by 40% of the respondents in Delta, who evaluated record keeping as ineffective or very ineffective, while only 30% of the respondents in Lagos and 21% of those in Borno shared this opinion (*SeeJD3.5c*).

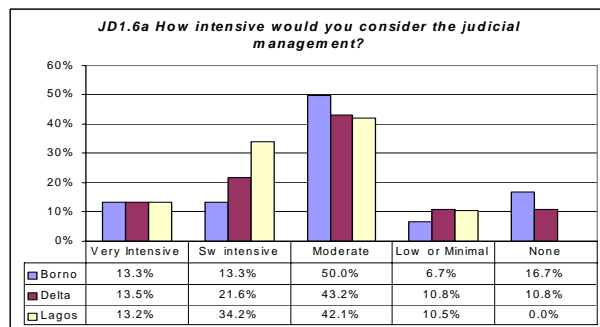
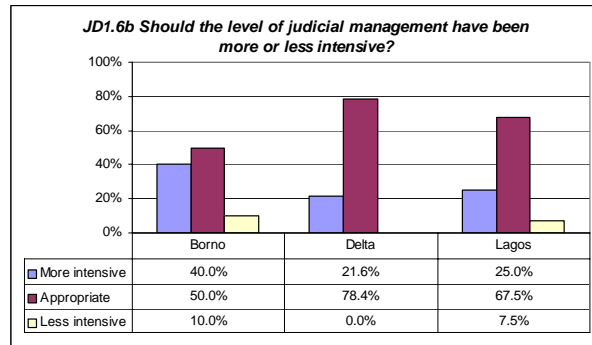


Efficiency and effectiveness of the trial process is further hampered by the lack of computers. Particularly surprising is the low level of computerization in the courts in Lagos state.

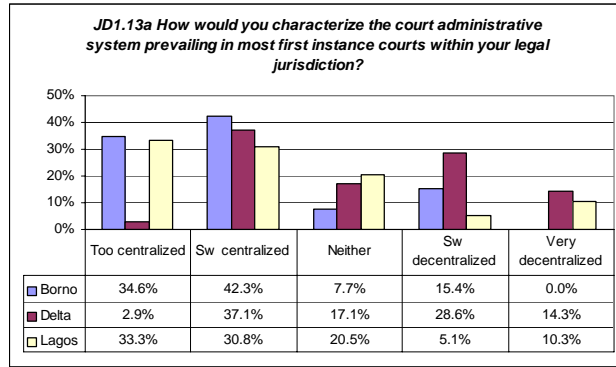
The few computers available also do not seem to be employed in the most efficient way. E.g. less than 4% on the average are being used for computer based case management (*SeeJD1.12a and JD1.12b*).



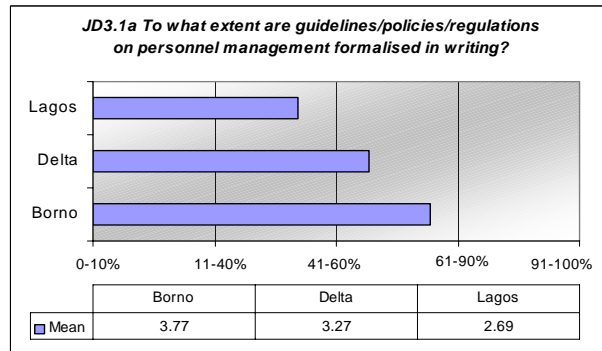
With regard to case management, the activism of Judges differed significantly across the three States. When asked to characterize the level of judicial management in a typical case, 50% of the Judges in Lagos considered their case-management style as very or somewhat intensive, while in Delta only 35%, and in Borno only 26% of the respondents shared this opinion (*see JD1.6a*). Also, in Borno state, a considerably smaller percentage of Judges felt that the level of active case-management was appropriate, while 40% vowed for a more active case-management style. In Delta and Lagos, only 21,6% and 25% respectively felt that the case-management style should be more active (*see JD1.6b*).



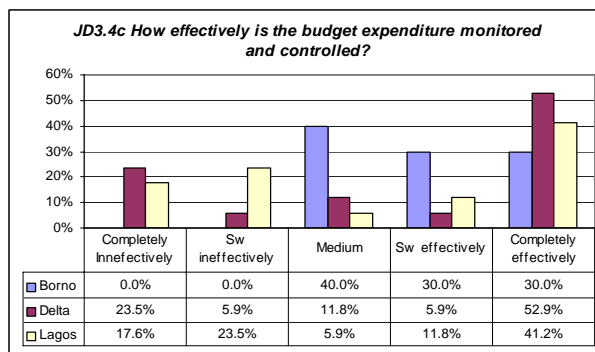
Judges were also asked to characterize the court administration in their States in terms of centralization. In Lagos and Borno State, respondents were of the opinion that the court administration was overly centralized, while in Delta, it was not possible to identify a clear trend among the answers given (*see JD1.13a*).



When asked about the frequency with which guidelines/policies/regulations on personnel and budget management are formalized in writing, great differences emerged among the three States. On a scale from 1 (corresponding to none of the times) to 5 corresponding to almost all the times, Lagos State scored the lowest (2,7), with budget and personnel related guidelines, policies and regulations being published in writing only about half of the times, while Borno scored 3.8, and Delta 3.3 (see JD3.1a).

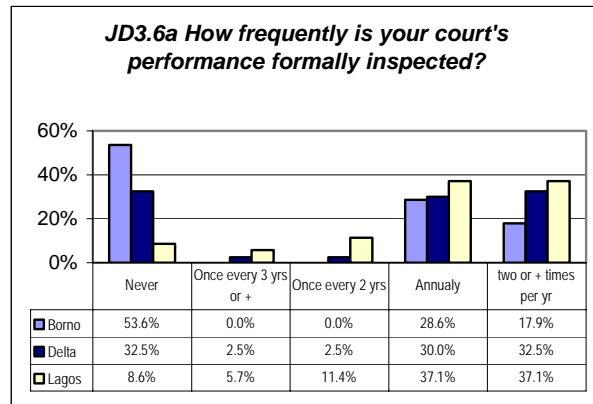


As far as financial management is concerned, Judges in Borno seemed most satisfied. None of the respondents perceived the budget administration as ineffective; while in Delta, about 30% and in Lagos as many as 40% of the respondents considered the budget and expenditure monitoring and controlling completely or somewhat ineffective (See JD3.4c).

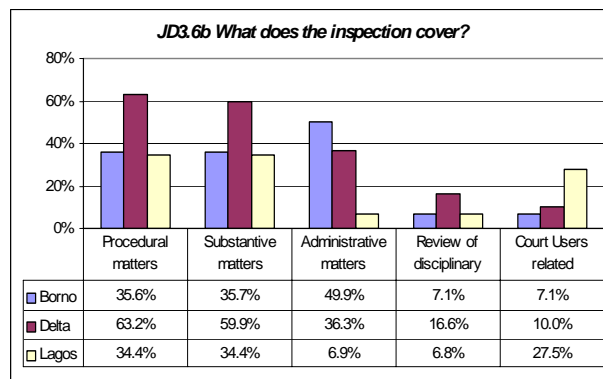


Judges were also asked to indicate, how often their court's performance was monitored and which aspects were covered by this monitoring exercise. It turned out that the courts in Borno State were the least frequently inspected, followed by Delta and then Lagos. More specifically, 54% of the respondents in Borno claimed that their courts were never inspected. In Lagos State,

inspections were discovered to be much more frequent with less than 10% of the respondents claiming that their respective courts have never been inspected.

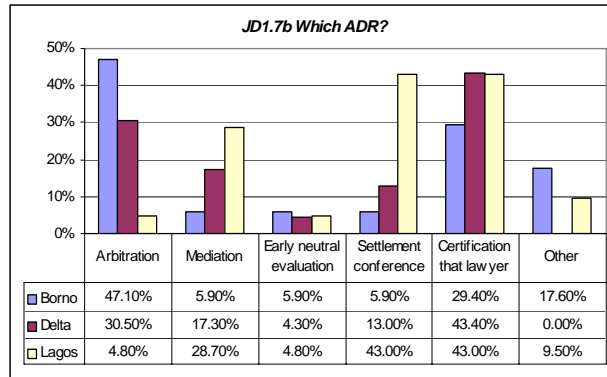


On the rare occasions when courts are being monitored in Borno, the inspections covered mainly administrative matters (50%)⁵, and to a lesser degree procedural and substantive matters (both 36%) (*see JD3.6a*). Hardly ever did the inspections cover Court User related or disciplinary matters (*See JD3.6b*). In Delta and in Lagos, inspections focused mainly on substantive and procedural matters (about 60% of the cases). The courts in Lagos and Delta were not only the more frequently inspected, but inspections also covered a wider range of issues, in particular Court User related issues and disciplinary matters (*see JD3.6b*).



The trend on the frequencies of inspections was confirmed by the ‘evaluation in writing’ on the performances of the Judges. Again Lagos appeared to be the only State, where evaluations are carried out on a regular basis (*JD3.3a*).

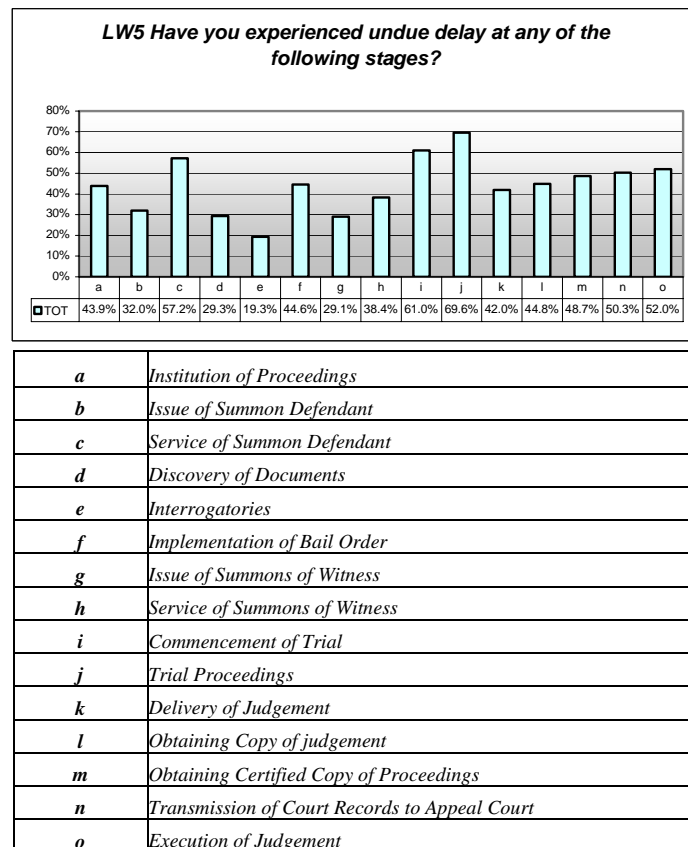
Since Alternative Dispute Resolution (ADR) generally is considered as a measure specifically adept to reduce the case load of the courts and to improve the quality and timeliness of justice delivery, judges were further asked how often and which techniques of ADR they used. It turned out that Judges in all the three States regularly applied ADR methods. When asked if they used court-related ADR methods, 70% of the respondents in Borno and Delta responded affirmatively. In Lagos, the percentage was lower with (57%). This is understandable, because Lagos State is the only among the three States with a functioning ADR centre, reducing significantly the need for ADR techniques being applied by the Judges themselves (*see JD1.7a*). The types of ADR methods being applied most frequently include certification that lawyers discussed settlement, arbitration, settlement conferences, and to a lesser degree mediation. (*See JD1.7b*).



2. Lawyers

a. Timeliness

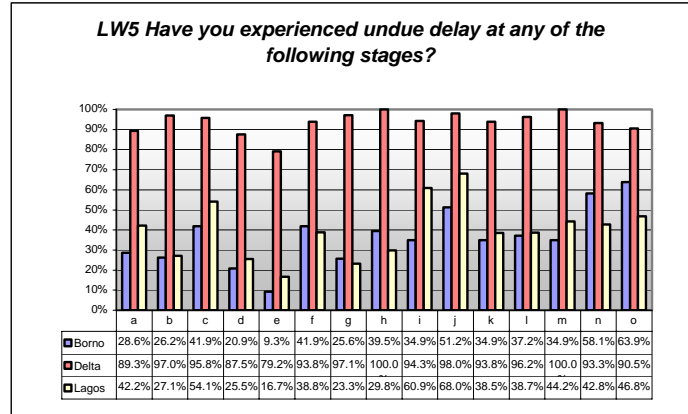
From the Lawyers survey it emerged that in all three States delays are most frequently experienced before the commencement of trial, in particular when servicing the defendant, and during the trial proceeding.



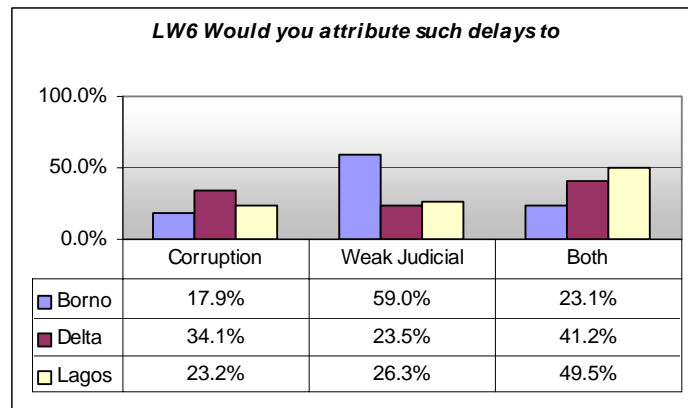
When comparing the results in the three States, it emerged that delays are much more frequent in Delta than in the other two States. Unnecessary delays seemed to be the norm at all stages of the justice delivery process. On the average, between 90% and 100% of the respondents claimed to have experienced undue delays (*see LW5*).

In Lagos ‘state, significant delays were experienced before the ‘commencement of trial’ (60%) and during the ‘trial proceedings’ (68%), as well as with the ‘servicing of summons on defendants’(54%) and ‘execution of judgments’ (46%).

In Borno state, the delays seemed to be lower when compared to those experienced in Lagos and Delta. Particularly few are those respondents who had experienced delays at the stage of the ‘discovery of documents’ and ‘interrogatories’, while more frequently the ‘transmission of court record to appeal court’ (58%) and ‘execution of judgment’ (over 60%) seemed to be delayed.

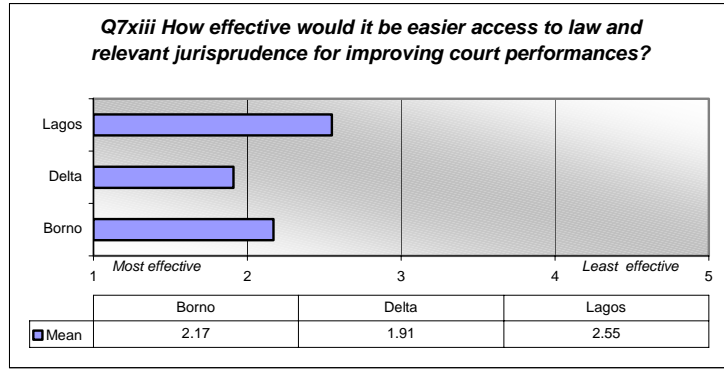


When asked to identify the reason for these delays, the Lawyers indicated that corruption, weak institutional management, or both as the major causes (*see LW6*). While in Lagos, corruption and weak management were equally responsible for the delays, in Borno, the latter was considered a bigger problem.



b) Quality

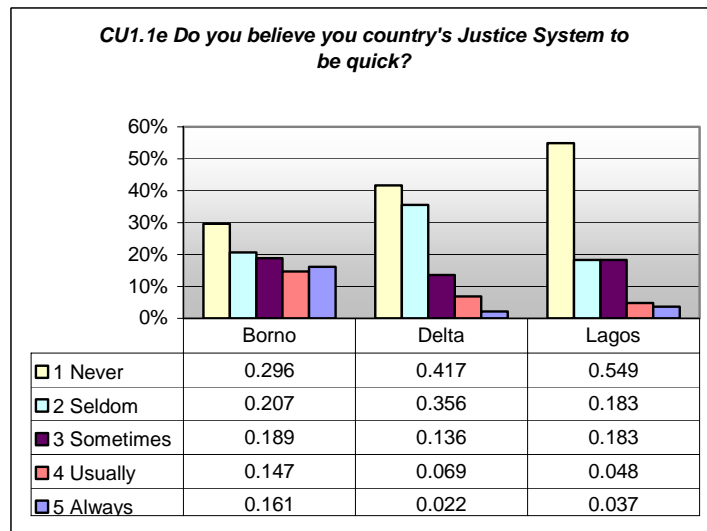
As far as the quality of justice delivery is concerned, the lawyers were asked to evaluate to what extent enhancing accessibility to the existing laws, precedents and other relevant jurisprudence would improve court performance. In particular in Delta State, respondents felt that an easier access to legal information would in improving court performance.



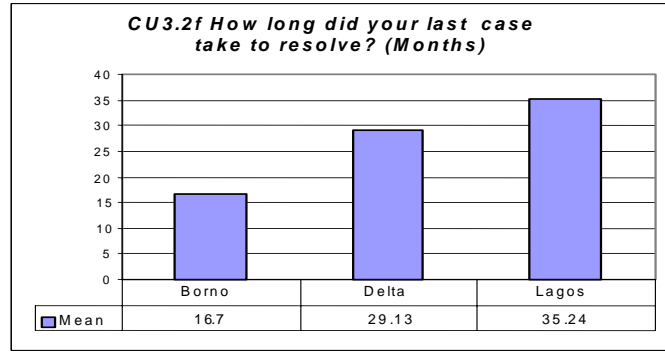
Court Users

a) Timeliness

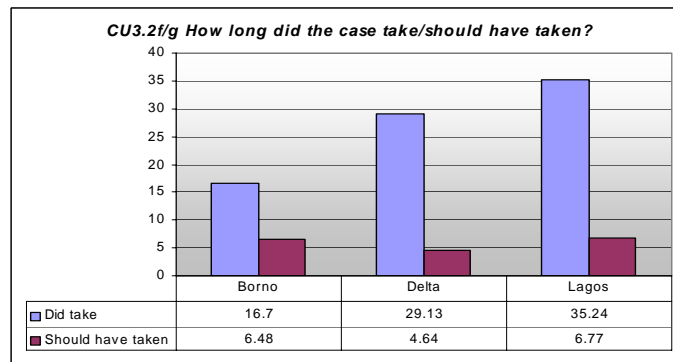
Across the three States, the majority of court users perceived justice delivery to be never or seldom quick, with the situation in Delta being worse than in Lagos and Borno. 77% of the court users in Delta considered the justice system to be never or seldom quick, followed by Lagos with 72% and Borno with 50% (*seeCU1.1e*).



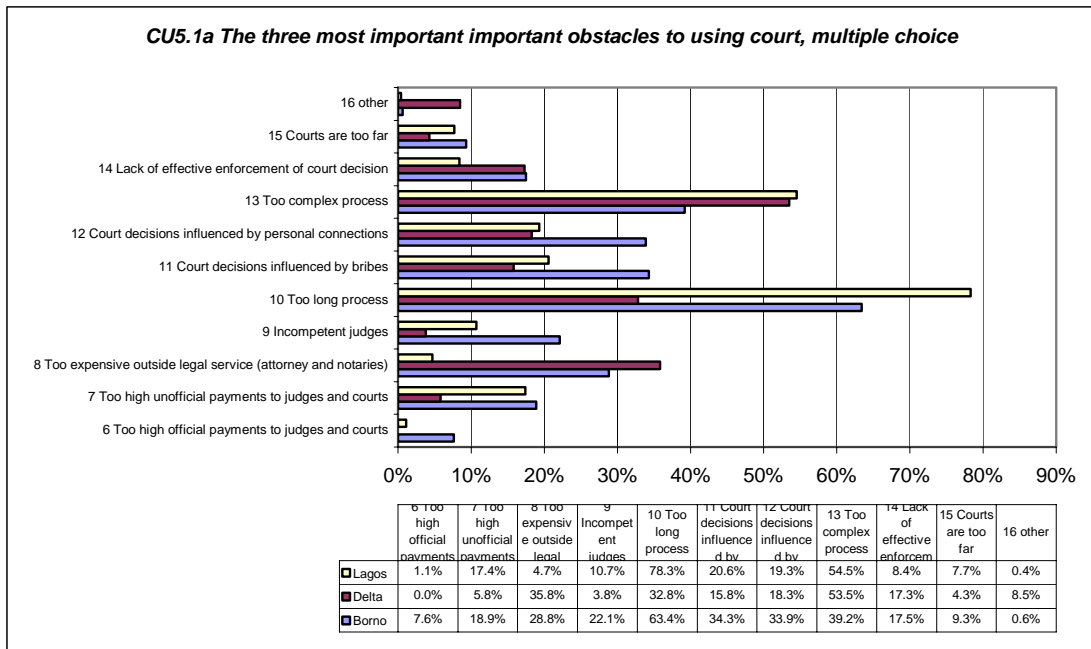
The perception of timeliness, or the lack hereof, is further confirmed by the experiences of the court users. When asked how long it had taken the justice system to resolve the respondents' most recent case, it turned out that on the average, cases in Lagos took 35.2 months, in Delta 29,5 months and in Borno 16.7 months (*seeCU3.2f*).



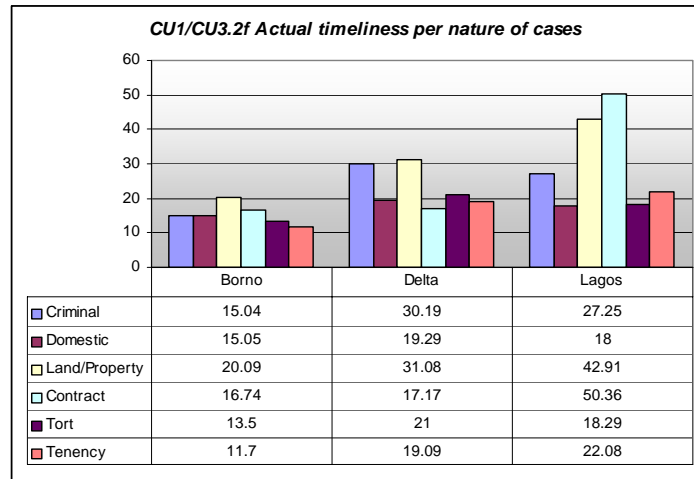
While the delays varied significantly across the three States, the expectations of court users regarding the ideal average duration of a court case, were relatively similar across all three States, with an average of six months (see CU3.2g and CU3.2f).



When comparing the issue of delays with other problems affecting the justice system, ‘length of process’ was considered the most important obstacle to using the courts, both in Lagos (78 %) and in Borno (63%), while in Delta it was perceived only as the third most serious problem (See CU5.1a).

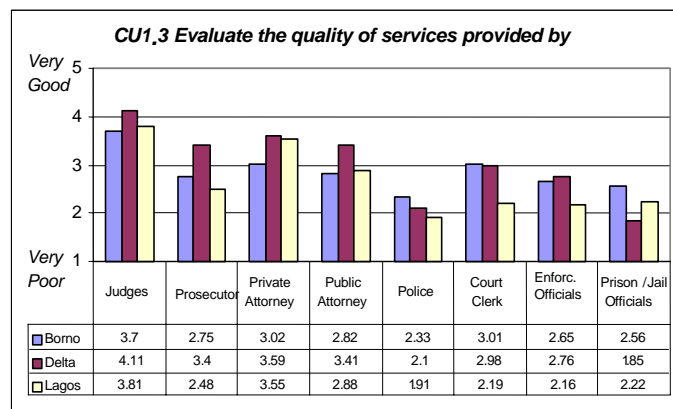


The length of trial differs from State to State depending on the case-type. While in Borno State all types of cases take between 10 and 20 months, in Delta and Lagos significant delays could be identified for certain case-types. E.g. in Delta State criminal cases and land and property related cases take more than 30 months to resolve, while in Lagos contract and land and property related cases take up to 50 months. Considerable differences were also identified with regard to criminal cases. While in Borno criminal cases were concluded relatively quickly, significant delays were experienced in Lagos and even more so in Delta, with cases taking almost three times as long⁷⁵. (SeeCU3.2f-CU3.2g cond to nature of the case and SeeCU1 in the Descriptive Part).



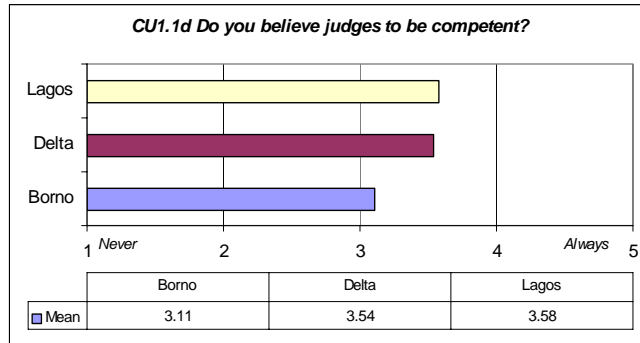
b) Quality

Court users were further asked to evaluate the quality of the services provided by different operators in the justice system, including Judges, prosecutors, private and state attorneys, police, court clerks, enforcement officials and prison authorities. On a scale ranging from "very good" to "very poor, Judges were scored higher, followed by private and public attorneys. The services provided by the police and prison personnel on the average were evaluated the poorest (seeCU1.3). Court users in Delta State in general were more appreciative of the quality of services provided, followed by those in Borno, while court uses in Lagos seemed most critical of their justice sector institutions.

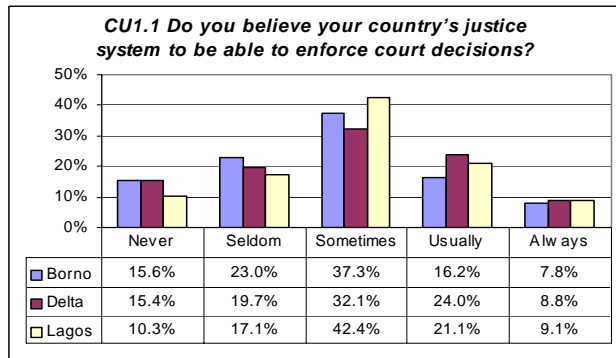


⁷⁵ As earlier pointed out, official statistics suggest that there are more reported crime in Lagos than other parts of Nigeria. See variously the Nigeria Police Monthly/quarterly crime reports, Federal Office of Statistics, Abuja, 2003.

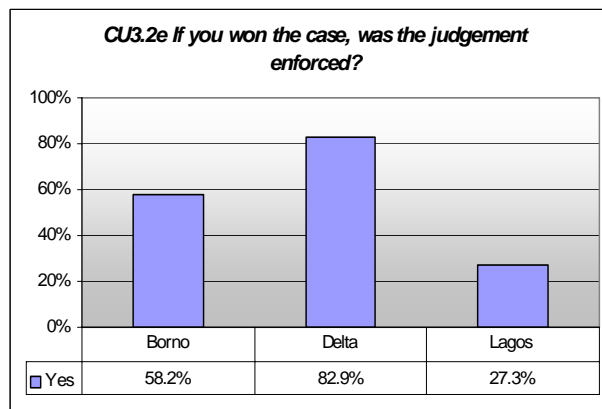
However, when court users were asked to evaluate the competence of judges, the judges in Lagos State were in the eyes of court users the more competent than their colleagues in Delta or Borno State (*seeCU1.1d*).



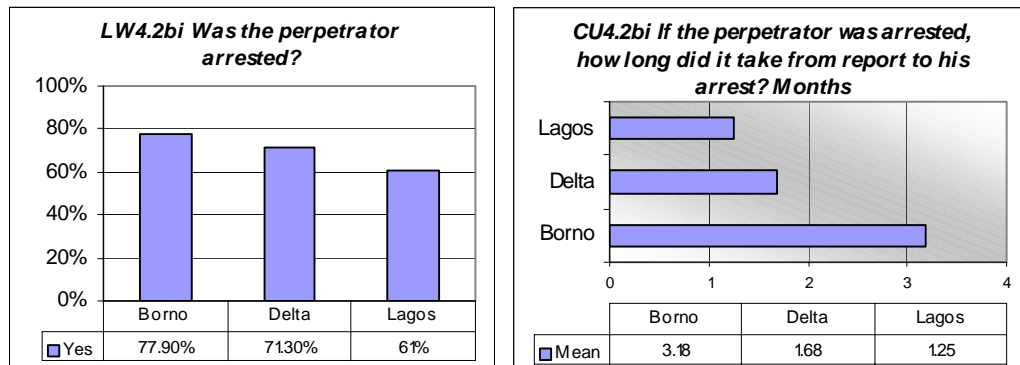
The perceived ability of the justice system to enforce its decisions, is another indicator for the quality of the justice system. The responses in this regard did not differ significantly across the states, with as most court users across believed that the justice system only sometimes was in a position to enforce its decisions (*seeCU1.1*).



However, when asked about their last court case, the enforcement-ratio in Delta State was better than in Borno, and especially than in Lagos, with than 30% of the judgments having been enforced on the day of the interview (*SeeCU3.2e*).



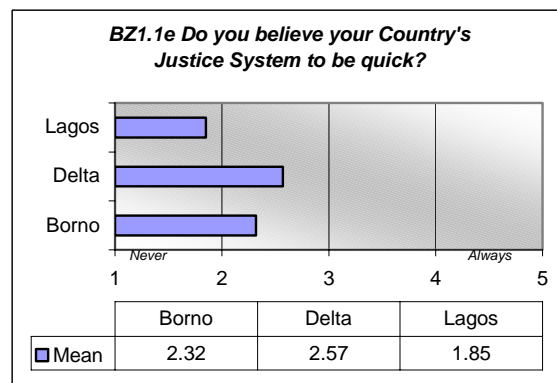
Differences in the enforcement of criminal cases turned out to be less significant. Across all States in about 60-80% of the cases, the perpetrator had been arrested. However, in terms of efficiency, law enforcement proved to be considerably slower in Borno than in Delta or Lagos. (see *CU4.2bis* and *CU5.1a*).



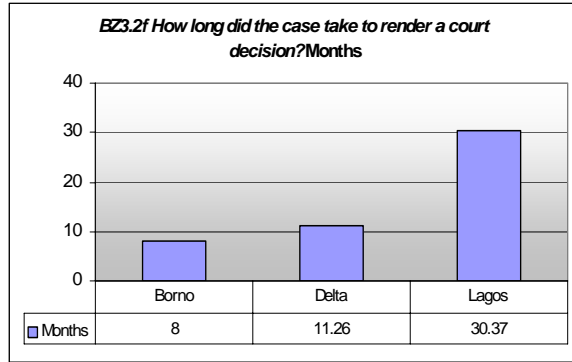
Business People

a. Timeliness

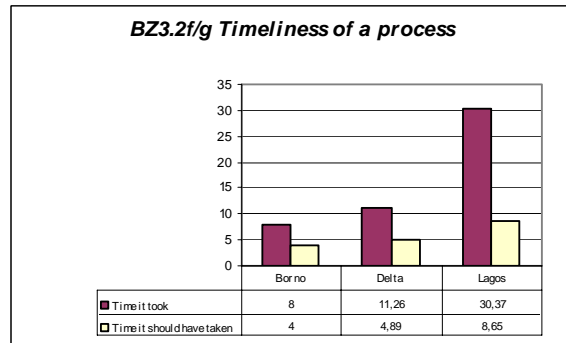
Also, business people seemed generally unsatisfied with the time required for the dispensation of justice. More than half of the respondents in Borno and Delta considered the justice system as never or seldom quick enough, while in Lagos State respondents were even more critical with more than 75% of respondents sharing this view.



These perceptions were confirmed by the experiences of business people. When asked how long their most recent court case took to resolve, it turned out that, on the average, in Lagos the dispensation of justice in business related cases took almost three times as long as in the other two States (see *BZ3.2f*).

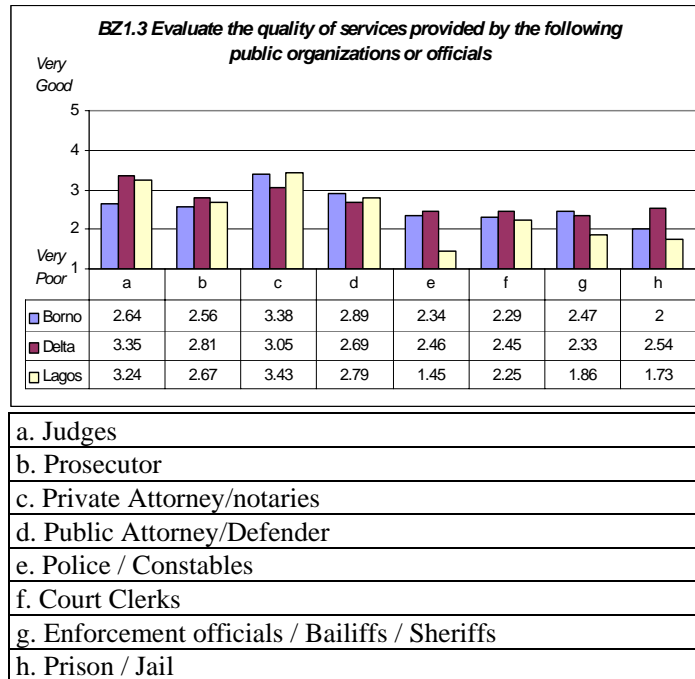


However, regardless of the relatively short time cases took to resolve in Borno and Delta, business people still consider the process of justice delivery as being too lengthy (*see BZ3.2f-BZ3.2g*).

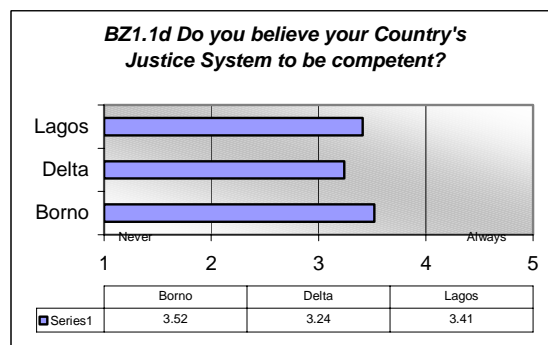


b. Quality

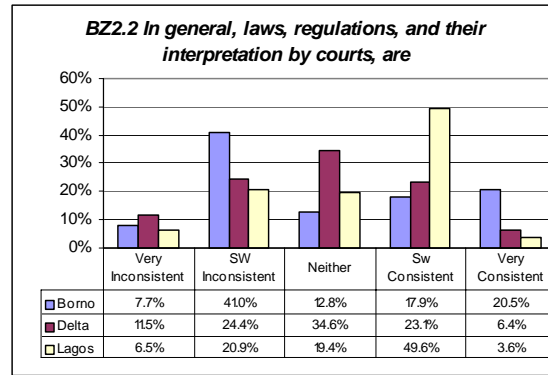
Also business people were asked to evaluate the quality of the services provided by different operators in the justice system, including Judges, prosecutors, private and state attorneys, police, court clerks, enforcement officials and prison authorities. On a scale ranging from "very good" to "very poor, Judges were scored higher, followed by private and public attorneys. The services provided by the police, court staff and prison personnel, on the average, were evaluated the poorest (*see CUI.3*). Court users in Delta State in general were more appreciative of the quality of services provided, followed by those in Borno, while court uses in Lagos seemed most critical of their justice sector institutions (*see BZ1.3*).



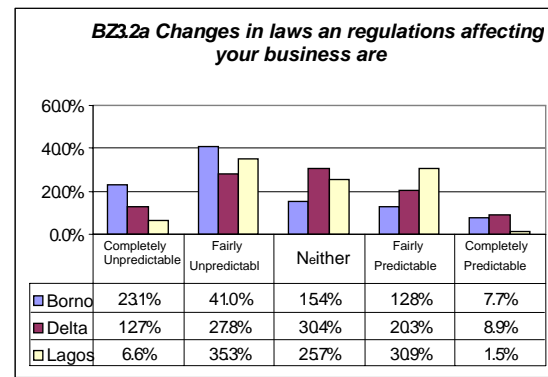
Generally, business people perceived the justice system as relatively competent. On a scale from 1 (=never competent) to 5 (=always competent) in all the three States, respondents scored the country's justice system between 3 and 4. Approximately, half of the respondents across all three States were of the view that their country's justice system was always or usually competent. When differentiating perceptions according the company size, it turned out that, generally speaking, business people owning larger companies seemed to have a slightly more positive perception of the competence of the justice system.



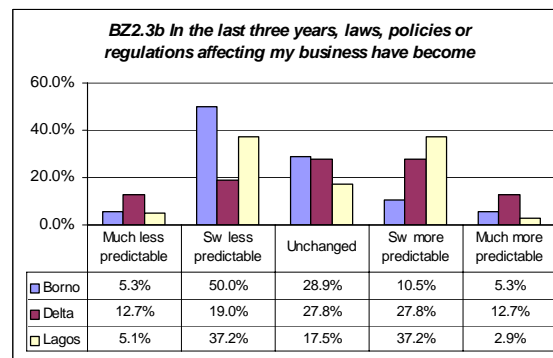
Business people were also asked, whether the laws, regulations, and their interpretation by the courts were consistent in their view. Again, results vary significantly among the three States. In Borno, for instance, 48% of business people believed that there are inconsistencies in the laws, regulations and their interpretation by the courts. In Delta, 35% of the respondents perceived laws, regulations and their interpretation not consistent, while 30% held a contrary view. In Lagos, the majority of the respondents found the laws, regulations, and their interpretation by the courts were consistent (*see BZ2.2*).



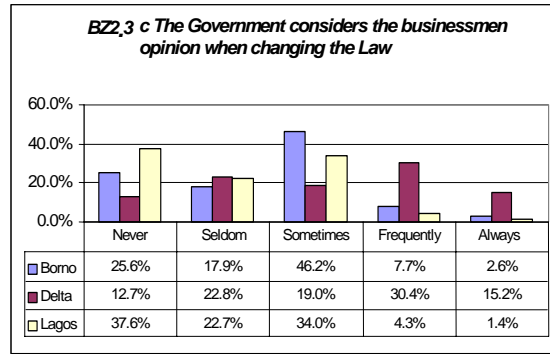
The perceptions of business people with regard to the predictability of changes in laws affecting their businesses varied from state to state. In Borno State, 65% of the respondents were of the view that changes in the law were unpredictable, while in Delta and Lagos only 40% of the respondents shared this opinion (*seeBZ3.2a*).



Furthermore, 55% of the respondents in Borno believed that legislative changes and policies affecting their businesses had become less predictable in the last three years. Only 32% in Delta and 40% of the respondents in Lagos held a similar view (*seeBZ2.3b*).

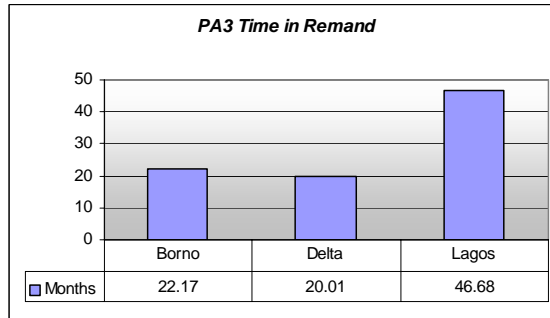


Business people expressed dismay over the lack of consultation in the legislative process affecting their businesses. In Delta State, for example, about 34% of the respondents declared that the government did not consider their inputs in law making. While in Borno and Lagos State, 43% and 60% respectively, shared this opinion (*seeBZ2.3c*).

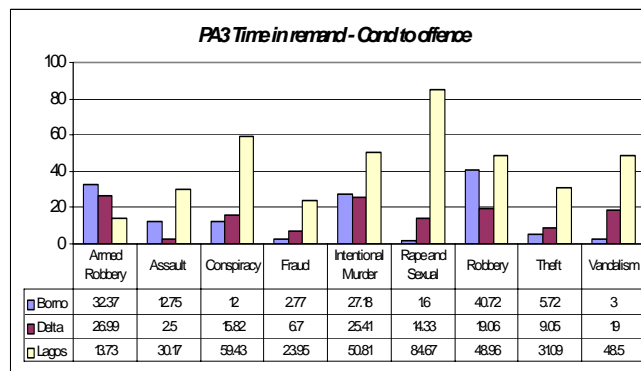


5. Prisoners awaiting trial

When asked about their experiences regarding timeliness of the justice system, the delays experienced by prisoners awaiting trial seemed even more significant than those experienced by other court users. In Lagos, on the average, prisoners had spent 47 months in remand without their trial being concluded. In Delta and Borno State, on the day of the interview, respondents had been expecting final judgment for 20 and 22 months respectively.



The months in remand further differ according to the type of crime. While in Lagos, the time spent in remand is the longest for each type of crime with the exception of armed robbery, significant differences emerged with regard to rape and sexual offences, and some of the less serious offences, such as vandalism, theft, conspiracy and fraud. While in some cases, e.g. in the case of rape and sexual offences, this may be due to cultural differences, in other cases, such differences of the punitive attitude towards certain less serious offences do not seem explicable, let alone justifiable. With regard to the less serious offences, this finding raises the question if there are significant differing policies among the three states when it comes to granting bail (*see PA3 cond to Offence*).

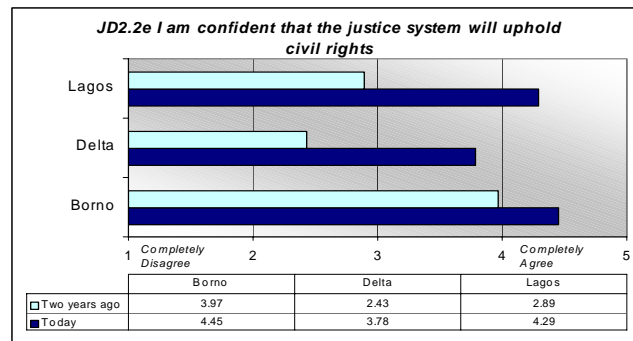


D. TRUST IN THE JUSTICE SYSTEM

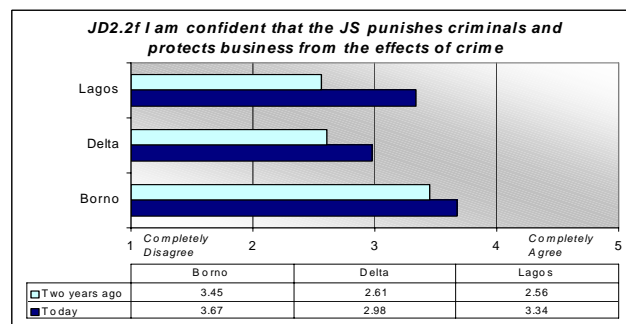
Judges, court users and business people were further asked various questions concerning their trust in the justice system’s ability to uphold the civil rights of citizens, including their contractual and property rights, and to support a private sector development in a free market environment.

1. Judges

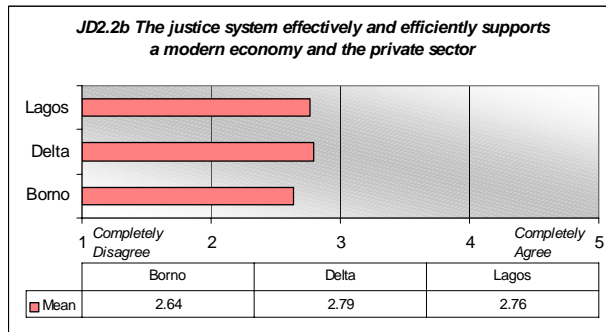
When asked if they were confident that the justice system was able to uphold citizens’ civil rights, including contract and property rights, Judges generally responded affirmatively. In Borno and Lagos State, Judges either “completely” or “somewhat” agreed, while respondents in Delta mostly “somewhat” agreed. When asked whether their confidence had changed during the past two years, the results revealed a significant increase of trust in the system in all three States (*see JD2.2e*).



The results are less encouraging with regard to their perception of the capacity of the justice system to deal with crime; in particular, to punish criminals and guarantee the safety of lives and property. In Delta State, respondents were rather skeptical about the capacity of the justice system. In Borno, and to a lesser degree in Lagos, respondents were more confident that the justice system was in a position to somehow effectively confront crime (*see JD2.2f*). Respondents were further asked about their level of confidence two years prior to the interview. In all three States, respondents agreed that the crime control situation had slightly improved.

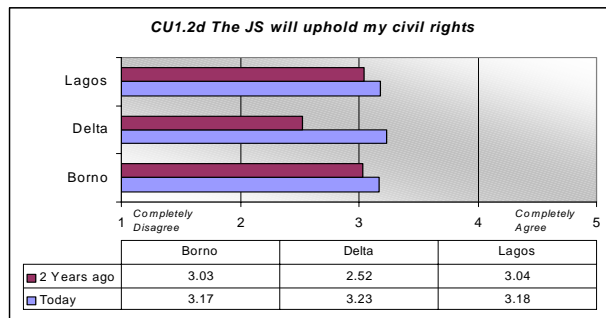


Further, respondents were asked to evaluate the effectiveness and efficiency of the justice system in supporting a modern economy. There was a shared skepticism across all three States, with the average ranking around 2.7 on a scale from 1 (=completely disagree) to 5 (=completely agree) (*see JD2.2b*).

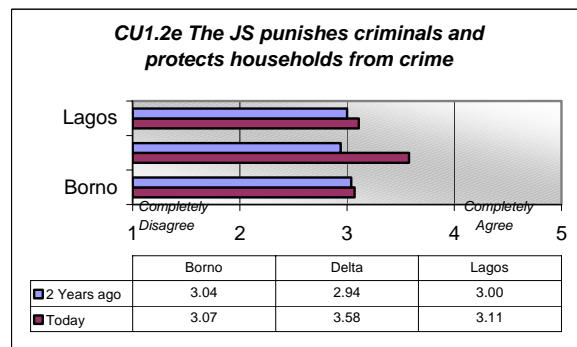


2. Court Users

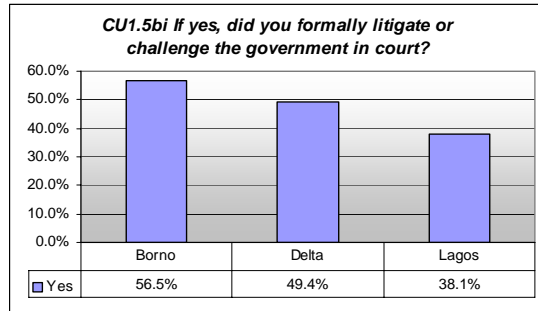
When court users were asked about their opinions concerning the justice system's ability to uphold their civil rights, respondents were less confident than the Judges, however, on the average, they were still slightly positive in their assessment. Also, they agreed that the justice system's ability in this regard had improved during the past two years (*see CU1.2dii*)



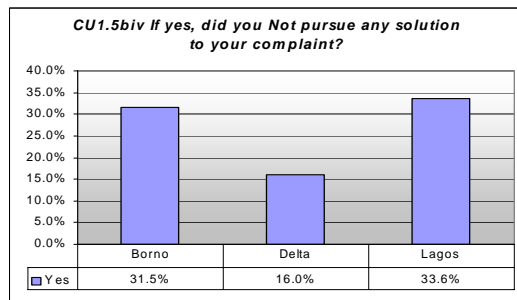
On the justice system's ability to confront crime, court users confirmed largely the perceptions of Judges. It is interesting to observe that court users in Lagos and Delta had slightly more positive view of the justice system's ability to punish criminals and protect businesses from the adverse effects of crime (*see CU1.2e*)



An important indicator for the trust of the public towards the justice system, is the readiness of citizens to file a complaint against the Government in court. It was discovered that, out of the 20-25% of the respondents who have had a complaint against the Government (*see CU1.5a*), an average of 40-50% had filed a court case, with court users in Borno being generally more willing to use formal litigation (*see CU1.5bi and CU1.5bii*).

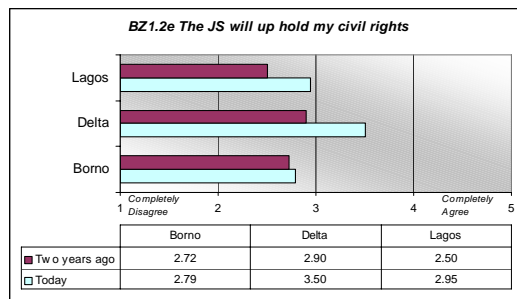


In Lagos and Borno states, in the majority of the cases in which complainants refrained from filing a formal complain in court, they did not after all, seek any other solution. While in Delta state, court users appeared more prone to seek unofficial solutions to their complaints against Government (*see CU1.5biv*).

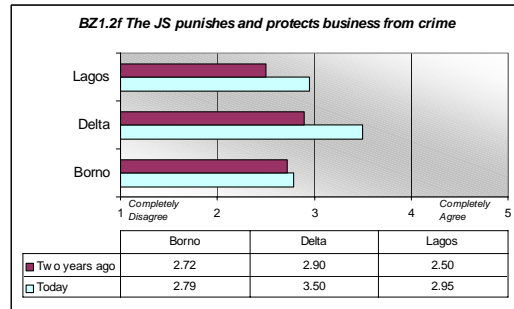


3. Business People

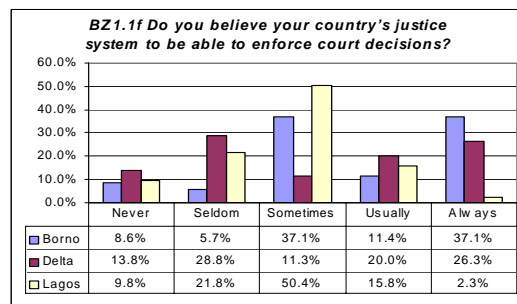
Business people were asked about their opinions concerning the ability of the justice system to uphold the civil rights of the country's citizens. Again, opinions in Delta were slightly more positive than in the other two states and in all the three States, the trust level had improved compared to two years before the interview (*seeBZ1.2ei and SeeBZ1.2eii*).



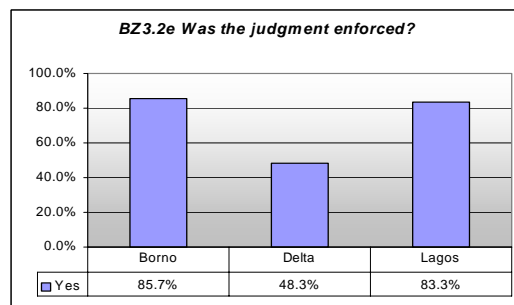
Further, when asked about the perceived capability of the justice system to protect businesses against crime, respondents rated the Delta State slightly better than Lagos and Borno. However, when comparing the situation as perceived today, with the situation of two years ago, significant improvements emerged all the three States (*seeBZ1.2fi andBZ1.2fii*).



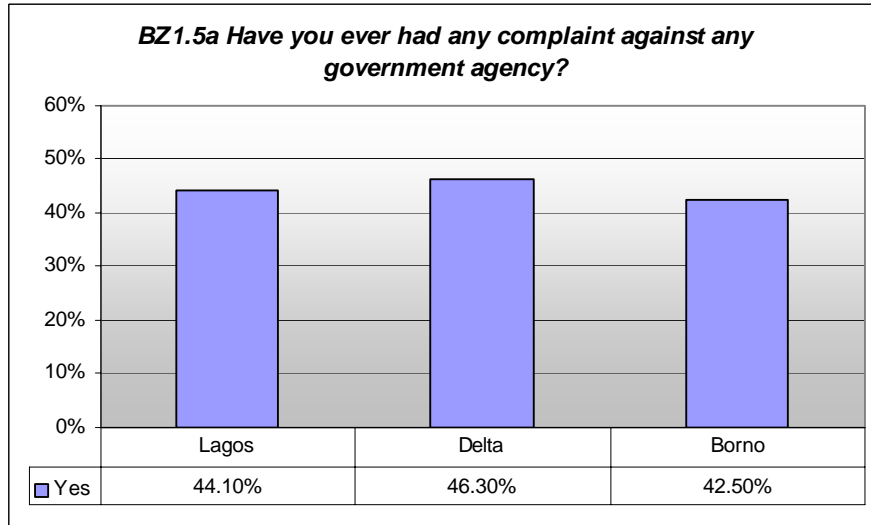
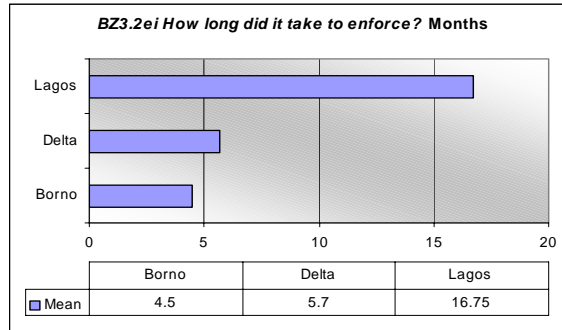
Also, business people were asked whether they believed that the justice system was able to enforce its decisions. In this regard, the trust level varied significantly both across respondents and states. In Delta State, 42% of the respondents believed that the justice system was never or seldom able to enforce its decisions, while 46% believed that the justice system was able to enforce its decisions always or usually. In Borno State, 50% of the respondents believed that the justice system “usually” or “always” was able to enforce its decisions. In Lagos state, the majority of the business people considered the justice system capable of enforcing its decisions, while only 30% were skeptical (*see BZ1.1f*).



The survey went further to explore the experiences of the business people in this context. In Borno and Lagos, 85% of the respondents claimed that the judgment in their last court case had been enforced, while in Delta apparently only 50% of the judgments had been enforced (*see BZ3.2e*).



When asked how long it had taken to enforce the judgments, it turned out that the justice system in Borno State had performed better, than those in Delta, and especially in Lagos, where it took almost four times longer than in Borno to enforce the courts’ decisions (*see BZ3.2ei*).

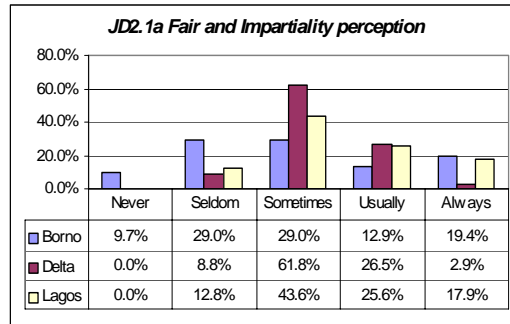


E. INDEPENDENCE, FAIRNESS AND IMPARTIALITY

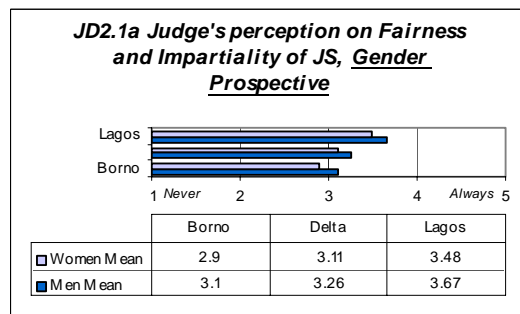
Judges, Lawyers, court users and business people were asked various questions relating to their experiences and perceptions of the independence, impartiality and the fairness of the justice system.

1. Judges

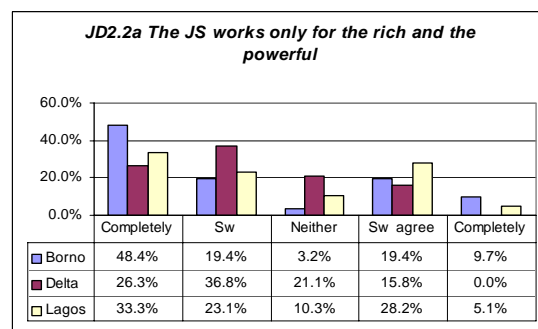
Judges were consistent in their opinions concerning the fairness and impartiality of the system. Most of the Judges rated the justice system either as sometimes or usually fair and impartial. However, when comparing the three States, some differences in the perceptions emerged. For example, in Borno State, only 30% perceived the justice system as “usually” or “always” fair, while about 40% felt that the justice system was only “seldom” or “never” fair, respondents in Delta and Lagos were less critical (*see JD2.1a*).



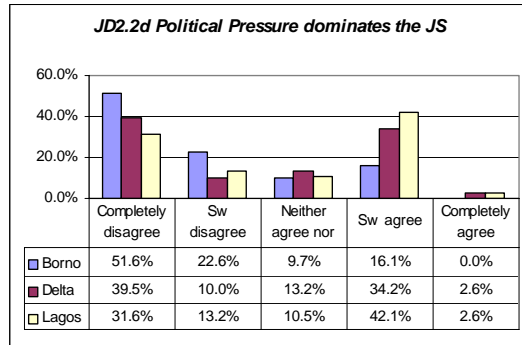
Significant differences could be observed according to gender, with female Judges perceiving the justice system in general as less fair and impartial than their male colleagues (*see JD2.1a cond to gender*).



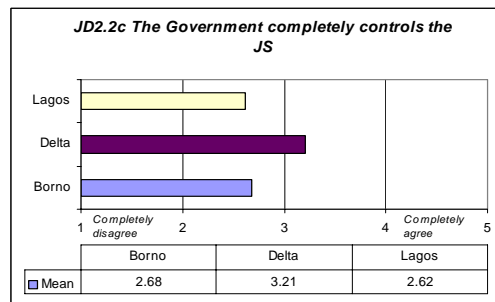
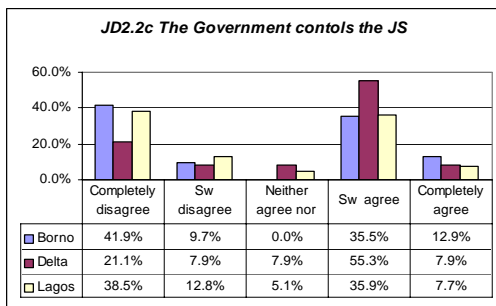
In order to further explore the judges' perceptions of fairness and impartiality, respondents were asked the extent to which they agreed with the statement that: "the justice system works only for the rich and the powerful". In all the three States, the majority of respondents either completely or somewhat disagreed (*see JD2.2a*).



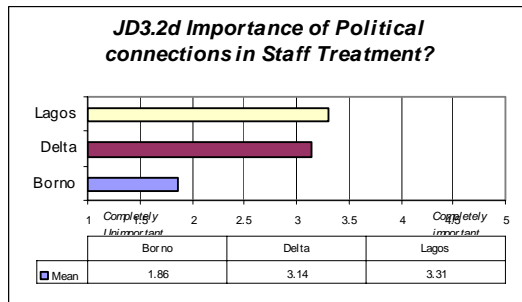
Moreover, Judges were asked to consider the statement that: "Political pressure dominates the justice system". Respondents largely disagreed with the statement. In Borno state, more than 70% completely or somewhat disagreed, followed by around 50% in Delta and 45% in Lagos (*see JD2.2d*).



However, when asked whether they believed that the Government controlled the justice system, 63% in Delta, 47% in Borno, and 43% in Lagos “somewhat” or “completely” agreed (see JD2.2c).

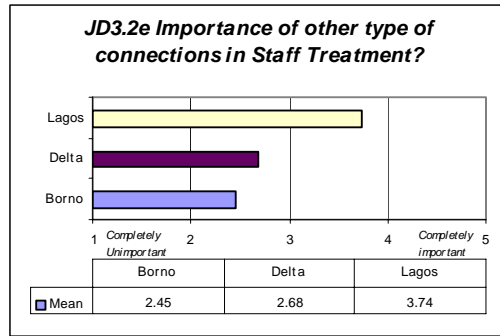


Furthermore, the survey attempted to explore the levels of perceived meritocracy in the appointments and careers of judicial officers. Respondents were, therefore, asked how important political connections were for the treatment of staff. In Lagos and Delta respondents felt that such connections were neither overly important nor unimportant, while in Borno State, most respondents considered political connections in the appointment of Judges as unimportant.

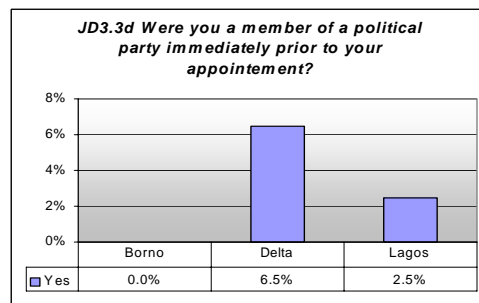
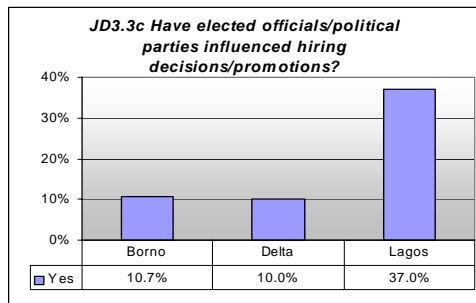


A similar question was also asked with regard to other forms of connections, such as family, friendship or ethnicity. In Lagos the importance of such connections was rated relatively high, while in Delta and Borno, the majority considered them as somewhat unimportant⁷⁶ (see JD3.2e). (see JD4.1d; CU6.1e).

⁷⁶ In this context, the ethnic structure of the Judges’ sample was compared to the court users’ sample and it was discovered, that while in Delta, they evidenced a similar ethnic composition, in Lagos the percentage of Judges belonging to the major ethnicity (around 90%) was much higher than the actual part of this ethnicity in the overall population (46%).. The same un-balanced distribution was observed in Borno



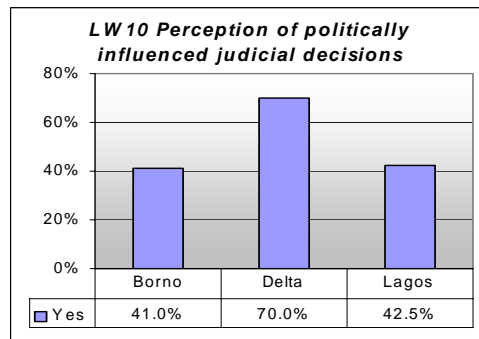
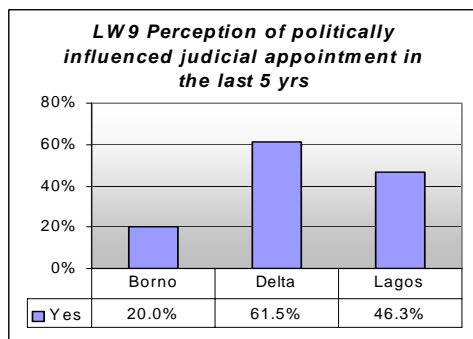
Judges were further asked about their concrete experiences concerning political pressures influencing the appointment or promotion of any of their colleagues. While in Lagos 37% of the respondents reported such an incident, in Delta and Borno only 10% could recall a similar case (see *JD3.3c*).



In general, party politics did not seem to have any bearing on the appointment or career of Judges.

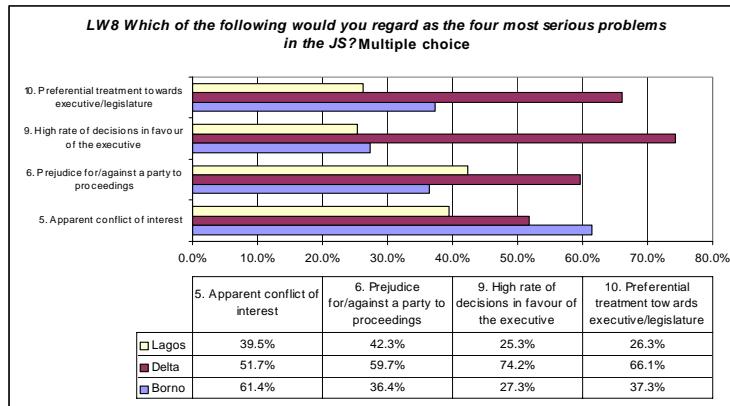
2. Lawyers

When lawyers were asked whether they believed that judicial appointments or judicial decisions were influenced by political pressures, Delta turned out to be the State where, according to respondents, such influences were most prevalent. About 62% of the respondents in Delta perceived judicial appointments to be influenced by politics, while about 70% felt that judicial decision were influenced by political considerations. In Lagos and Borno, this problem seemed to be less evident (see *LW9 and LW10*).



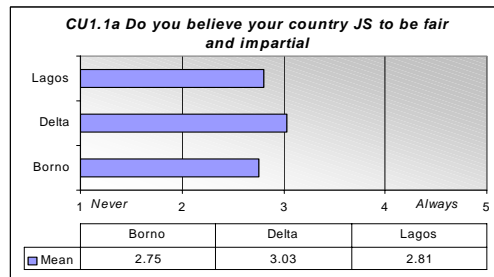
The skepticism of Lawyers in Delta concerning the independence and impartiality of the judiciary was confirmed, when comparing the problems of “preferential attitudes towards the

executive/legislature”, a "high rate of decisions in favor of the executive", and "prejudice for/against a party proceeding" with a wide range of other weaknesses of the justice system.

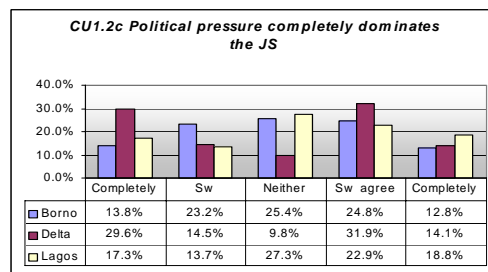


3. Court Users

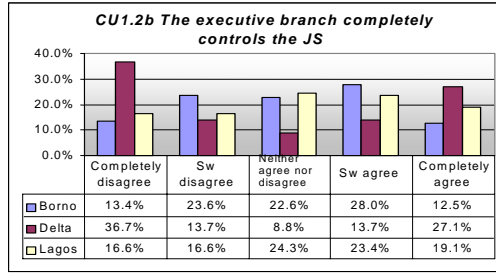
On a scale from 1 (=never fair and impartial) to 5 (=always fair and impartial), court users rated the courts on the average as neither fair nor unfair. This perception was not particularly connected with the outcome of the last court case they experienced (*see CUI.1*).



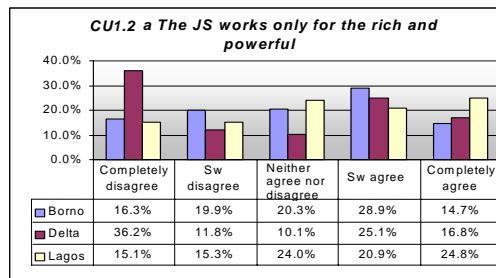
The court users were further asked about their opinions concerning the impact/influence of political pressures on the justice system. While in all States opinions seemed divided into those agreeing and those disagreeing with this statement, perceptions did not appear to be strongly dependent on whether the individual respondent had won or lost his or her last court case (*see CUI.2c*).



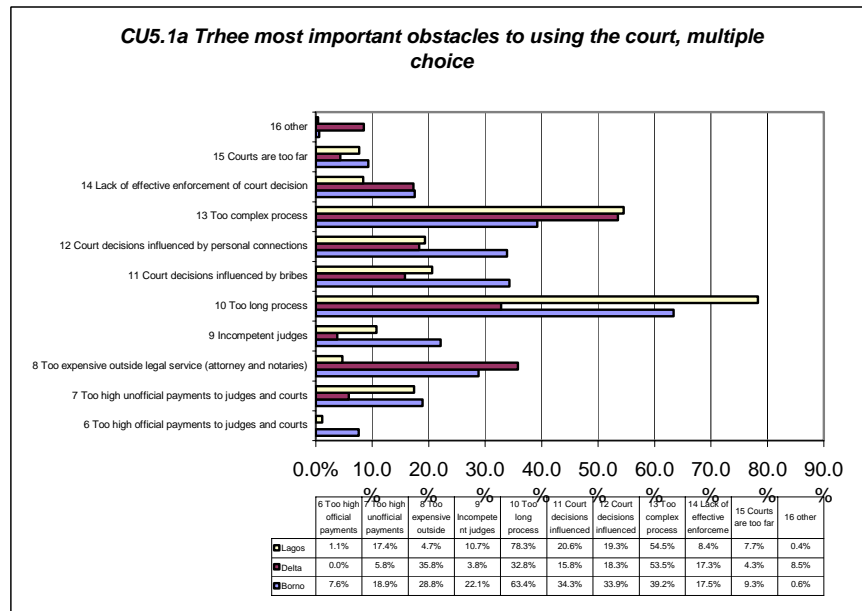
Similar results were obtained when the court users were asked to assess the level of control of the justice system by the executive branch. Again, differences in the perception of respondents were marginal (*see CUI.2b*).



Court users were further asked whether they would agree with the statement that the judiciary was being controlled by the rich and the powerful. While about 40% in Borno, Delta and Lagos agreed, a similar percentage of respondents either “somewhat” or “completely” disagreed. (seeCU1.2a).



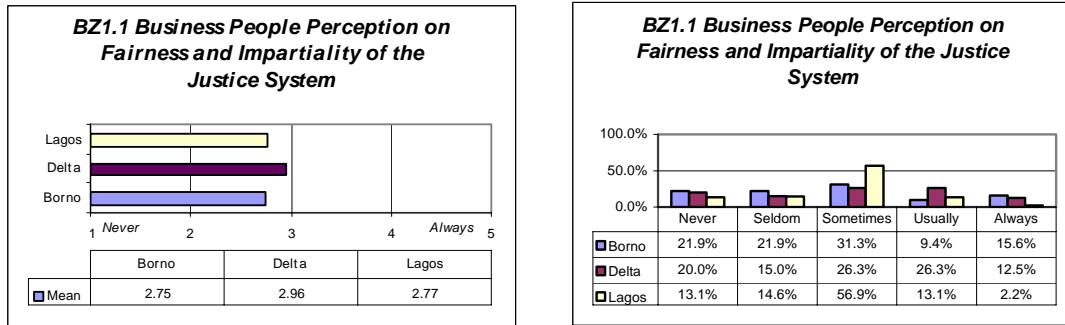
In a comparative analysis of the relative weight of factors hampering the proper administration of justice, the lack of impartiality and independence was rated second only to the complexity and delays of justice delivery. (seeCU5.1a).



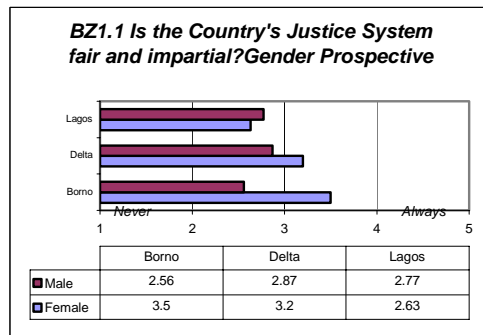
4. Business People

The results of the business people survey corresponded largely with the court users survey. When asked to rate the justice system’s independence, impartiality and fairness on a scale from 1 (never

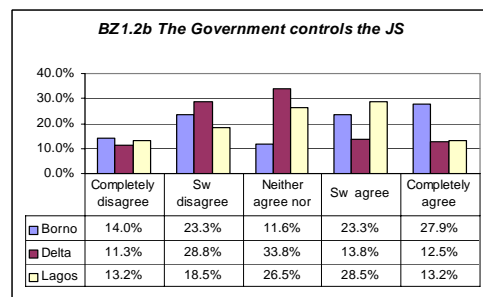
fair and impartial) to 5 (=always fair and impartial), respondents in all three States, on the average, rated the justice system as being neither fair nor unfair (*seeBZ1.1*).



Female respondents perceived the justice system on average as more fair and impartial than their male colleagues. This is particularly true for Borno and Delta (*seeBZ1.1 cond to Gender*).



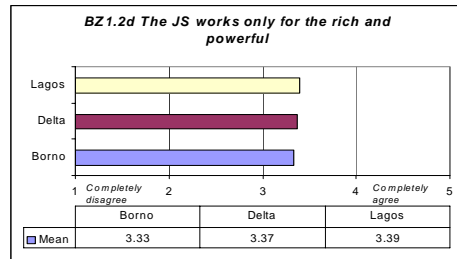
When asked about the degree to which they believed that the justice system was controlled by the Government (Executive arm), about 25% of the respondents in Delta, 41% in Lagos and 52% in Borno either “somewhat” or “completely” agreed with this assumption (*seeBZ1.2b*). However, at the same time, 30-40% disagreed with the statement.



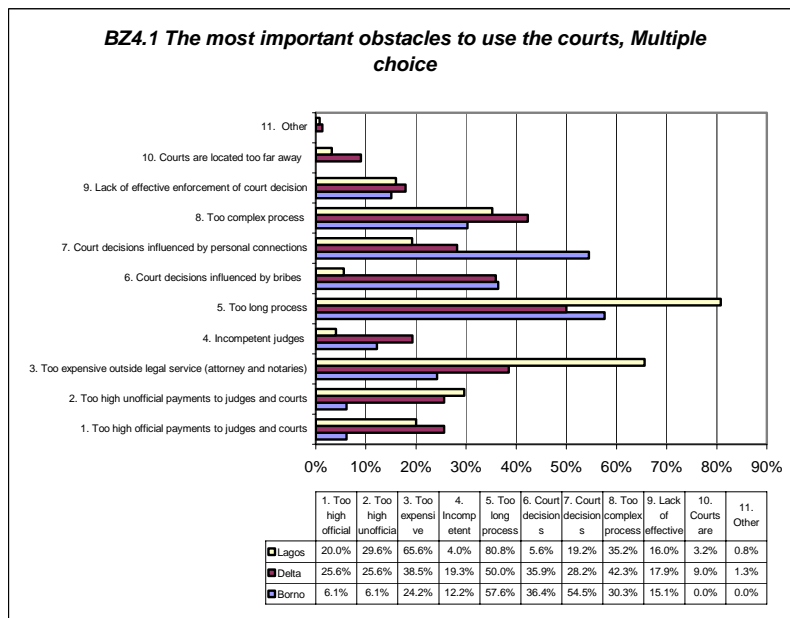
Business People were also asked whether they disagree with the statement that the justice system was dominated by political pressures (*seeBZ1.2c*). It turned out, that in Borno the majority of respondents (53%) either “completely” or ‘somewhat’ agree with this statement, followed by Lagos with 44%, and Borno with 35% of the respondents sharing this view.

The survey attempted also to determine whether other factors have a bearing on the perceived independence, impartiality and fairness of the justice system. Business people were therefore asked whether they agreed with the statement that: "the justice system only works for the rich and

the powerful". It turned out that, in all three States, respondents consistently neither agreed nor disagreed with this statement (*seeBZ1.2d*).



Out of eleven factors hampering justice delivery, respondents in Borno States ranked “the influence of personal connections in court decisions” as the second most important obstacle to using the courts, while in Lagos and Delta this was much less perceived to be a problem *See BZ4.1*).

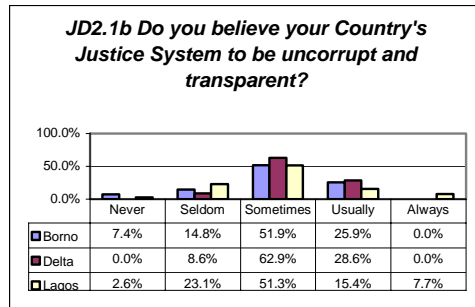


F. CORRUPTION

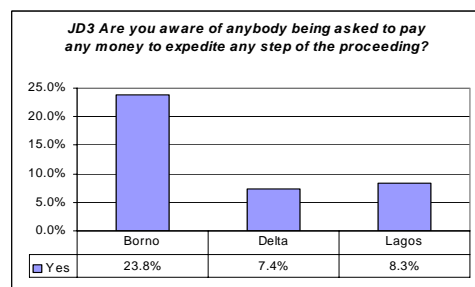
All categories of respondents were asked a comprehensive set of questions, exploring both their perceptions and experiences of corruption within the justice system.

1. Judges

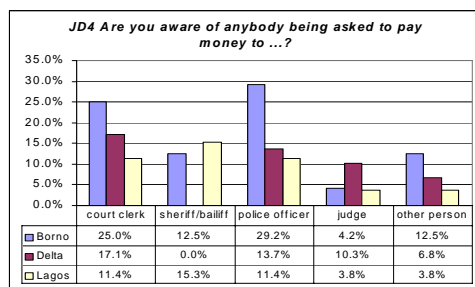
Judges were very critical in their assessment of the levels of corruption within the courts, with the majority in all the three States agreeing that the country's justice system was only sometimes transparent and uncorrupted (*seeJD2.1b*).



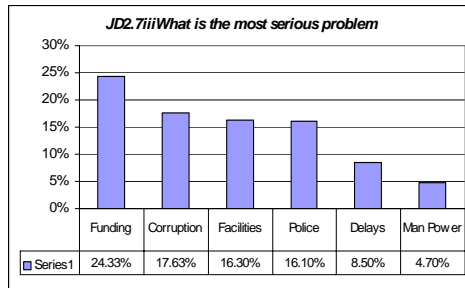
When asked whether they were aware of anybody being asked to pay a bribe in order to expedite any step of the proceeding, in Borno State, more than 20% answered affirmatively, while in Lagos and Delta, only about 8% admitted to have such knowledge (*see JD3*).



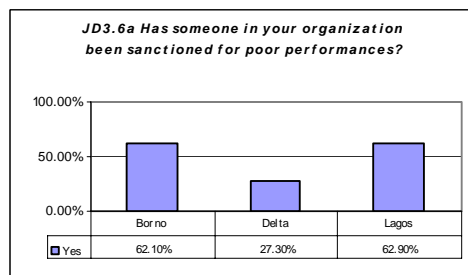
Further, Judges were asked to specify with regard to which professional categories, they were aware of concrete cases of bribery. According to the Judges in Borno State, corruption involved mostly police officers, followed by court clerks and enforcement officers. A similar situation could be observed in Lagos, with enforcement officers, police and court clerks being perceived as most likely to extort bribes. In Delta State, a slightly different picture emerged, with the court clerks being perceived as the most likely to receive bribes, followed by police and then by the Judges.



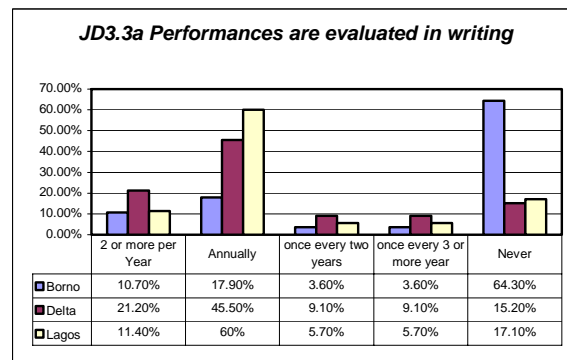
The real magnitude of the problem within the overall context of the administration of justice, emerged when comparing it with other obstacles hampering the delivery of justice. Over all, corruption was perceived as a highly serious problem to the country's justice system, second only to the lack of sufficient funding (*see JD2.7*).



The survey explored the efficiency and effectiveness of integrity safeguards, in particular the nature, scope and frequency of disciplinary control. When asked whether they were aware of any case of a court staff or a judge having been subject to sanctions for poor performance or unprofessional conduct, it turned out that, while in Lagos and Borno State more than 60% of the respondents replied affirmatively, in Delta less than 30% had knowledge of any case of disciplinary action.

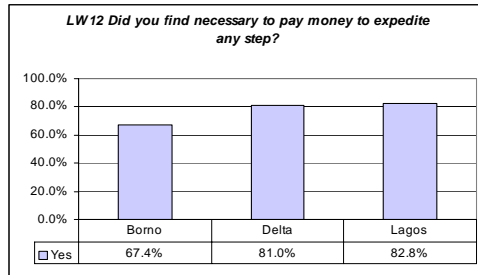


The survey further explored the frequency with which the performance of Judges is formally evaluated. It seems that, while in Lagos and Delta State roughly 70% of the respondents claimed to be evaluated annually, in Borno more than 60% of the Judges so far had never been evaluated in writing.

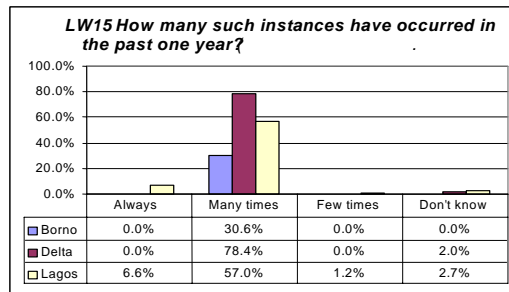


2. Lawyers

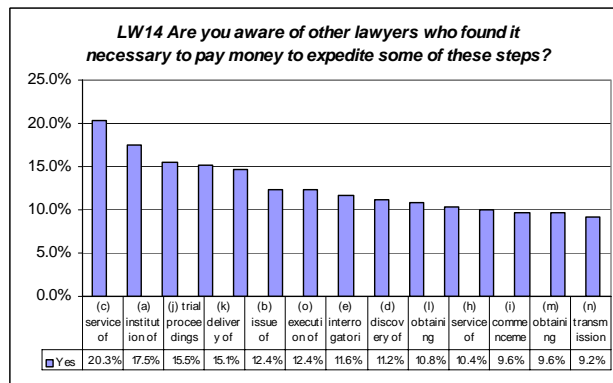
When lawyers' perceptions and experiences concerning corruption were explored, it turned out that the absolute majority of the respondents had found it necessary in the past to pay a bribe in order to expedite the handling of a procedural step. Both in Lagos and Delta, more than 80% of the Lawyers claimed to have had to pay bribes for expediting court procedures, while in Borno 67% had such an experience (*see LW12, LW14 and LW15*).



Out of the 65% of the respondents who had claimed to have paid a bribe during the last 2 years, Delta emerged as the one State where lawyers had been by far most likely to have use bribery in order to speed-up the court process, with 78% indicating that they had done so “many times”,



The study tried further to assess the nature and scope of bribery in the courts by asking lawyers specifically which procedural steps they typically felt inclined to expedited by means of bribery. It appears that the steps most likely to be accelerated by speed-money are: the ‘servicing of summons on defendant’, the ‘institution of proceedings’, and the ‘trial proceedings’, the delivery of judgment.



LW11 Percentage of respondents answering “Yes” when asked, whether they had ever been asked to pay money in order to expedite any of the procedural steps.

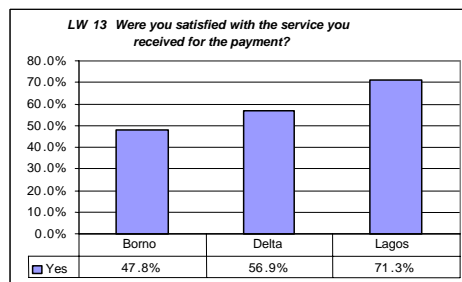
	Borno	Delta	Lagos
(a) institution of proceedings	10.0%	20.6%	24.2%
(b) issue of summons on defendant	6.7%	19.1%	16.3%
(c) service of summons on defendant	13.3%	33.8%	28.8%
(d) discovery of documents	6.7%	20.6%	12.6%
(e) interrogatories	6.7%	16.2%	8.4%
(f) implementation of bail order	13.3%	27.9%	20.0%
(g) issue of summons on witness	10.0%	20.6%	10.7%
(h) service of summons on witness	6.7%	27.9%	11.6%
(i) commencement of trial	10.0%	23.5%	11.2%
(j) trial proceedings	6.7%	22.1%	19.5%
(k) delivery of judgment	6.7%	17.6%	11.2%
(l) obtaining copy of judgment	20.0%	32.4%	18.1%
(m) obtaining certified copy of proceedings	10.0%	33.8%	14.9%
(n) transmission of court record to appeal court	10.0%	36.8%	12.6%
(o) execution of judgment	13.3%	26.5%	15.8%

Lawyers were also asked to specify to whom they would usually pay bribes. It resulted that, in Lagos and Delta, most of the Lawyers claimed to have bribed court clerks, while in Borno the number-one recipients were those who enforce the judgments of the court. A 30-45% of the respondents in all three States also had paid to the Police. Still a significant number of the respondents claimed to have paid bribes to the Judges. In Borno, more than 30% made this claim, followed by Lagos with 23% and Delta with 17%.

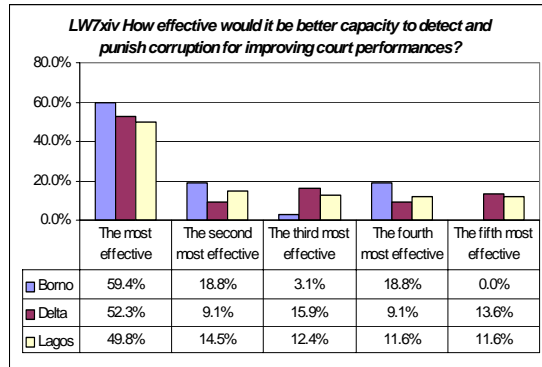
LW12 Have you, or anyone on your behalf, found it necessary to pay any money to one of the following professional categories in the justice sector?

	Borno	Delta	Lagos	TOT
(a) court clerk	48.7%	72.7%	67.1%	70.6%
(b) enforcement officer	27.2%	56.5%	40.3%	46.3%
(c) police officer	32.6%	44.0%	44.2%	43.1%
(d) judge	11.5%	16.7%	22.9%	20.0%
(e) another lawyer	4.6%	12.7%	4.8%	5.9%
(f) other person	6.9%	20.4%	9.0%	10.2%
No	32.60%	19.00%	17.20%	19%
Yes	67.4%	81.0%	82.8%	81.0%

Nevertheless, lawyers were mostly with the services they had received in return for the unofficial payment (see LW13).

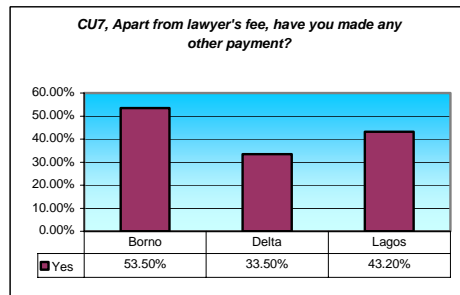


In conclusion, lawyers were asked to rate the effectiveness of enhancing the court’s capacity to detect and punish corruption, out of a number of measures to improve the justice system. More than 50% in each of the three States ranked combating corruption as the most important effective measure to improve the courts’ performance (*See LW 7*).

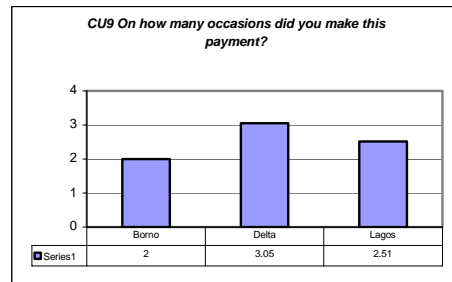


3. Court Users

Court Users’ experiences of corruption differed significantly across the three States. When asked whether they had made “unofficial payments” in relation to the case, they were currently attending, the responses differed significantly from State to State. In Borno, more than 53% indicated that they had made such payments, followed by Lagos with 43% and Delta with 33% (*seeCU7*).

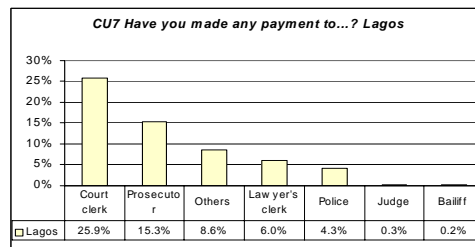
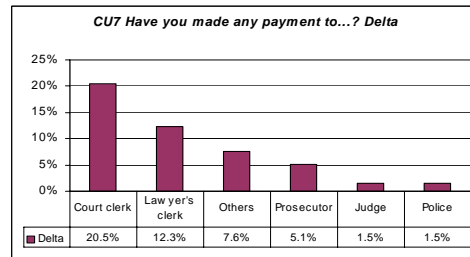
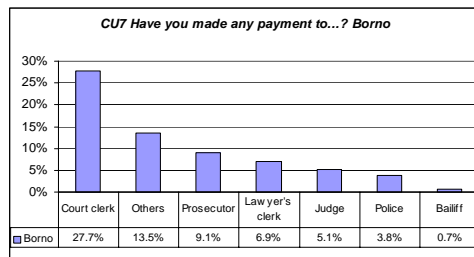


However, when asked about the frequency of such payments, those who actually had experienced corruption in Delta, had done so more often than their peers in the other two States (*see CU9*).



Court users were also asked to whom they had made such “unofficial payments”. They largely confirmed the experiences of lawyers, who had claimed to have made payments mostly to court clerks. However, there were variations in the responses regarding corruption among other

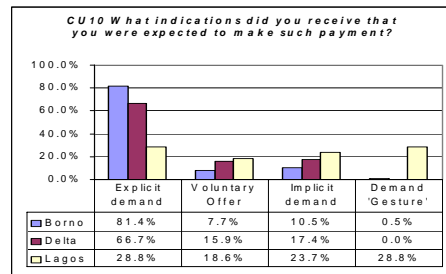
professionals. In Lagos and Borno, between 10-15% of the respondents had made payments to the police prosecutors, while in Delta State, 12% indicated to have paid to the lawyers' clerks. Very seldom, according to court users, they indicated to have paid bribes to a Judge (*seeCU7*).



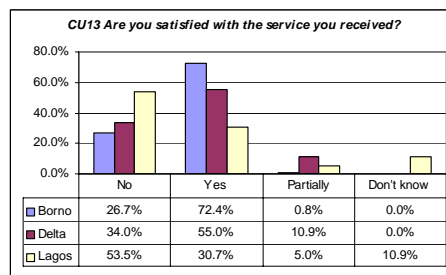
The reasons for such payments differed among the three States. It resulted that respondents mostly had paid for the "servicing of the court process" and "bail". In Delta, 51% of the respondents had bribed in order to speed up the servicing of the court process, followed by 45% in Lagos and 12% in Borno. Both, in Borno and Lagos states, many respondents indicated that they had to pay for "bail", 21% and 25% respectively, while in Delta, this seemed much less common. "Speeding up the procedure" was given as the major reason for unofficial payments by about 12% of the respondents in Delta and Lagos. In Lagos also, 17% of the respondents admitted to have paid for a "favorable judgment", while in Delta, only 8.4%, and in Borno only 3.3% had paid bribes for this purpose. (*seeCU8*).

CU8 If yes, what service did you receive for such payment?			
Service	Borno	Delta	Lagos
Procure	0.0%	0.0%	4.3%
Serve court processes	45.3%	51.1%	10.9%
Bail	25.3%	3.8%	19.6%
Nothing	11.0%	9.2%	18.5%
Accelerate the procedure	4.9%	12.2%	10.9%
Favourable judgment	3.3%	8.4%	16.3%
Other	0.0%	5.3%	0.0%
Witness summons	0.0%	1.5%	0.0%
Don't know	0.8%	0.0%	8.7%
C of O	2.0%	0.8%	1.1%
Typing work	0.0%	3.1%	0.0%
Enforcement judgement	2.0%	1.5%	0.0%
Adjournment	0.0%	0.8%	4.3%
Defence	2.9%	2.3%	0.0%
To transfer case	1.2%	0.0%	0.0%
Prosecute	1.2%	0.0%	1.1%

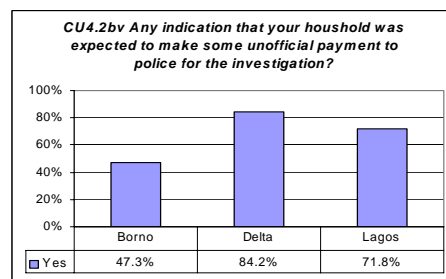
In order to further explore the extent and location of corruption in the courts, the survey tried to establish, how and who usually initiated the process of bribery. In most cases, it was found that the request for an unofficial payment was explicit, and was initiated by the public official. In Borno State, for instance, 81% of the respondents were explicitly asked for a bribe, while in Delta, and in Lagos the requests were more subtle, with 50% of the respondents having been asked for a bribe, either through gesture or an implicit demand, such as delays, the unjustified refusal of bail, or a general reluctance to carry out a requested service (*see CU10*).



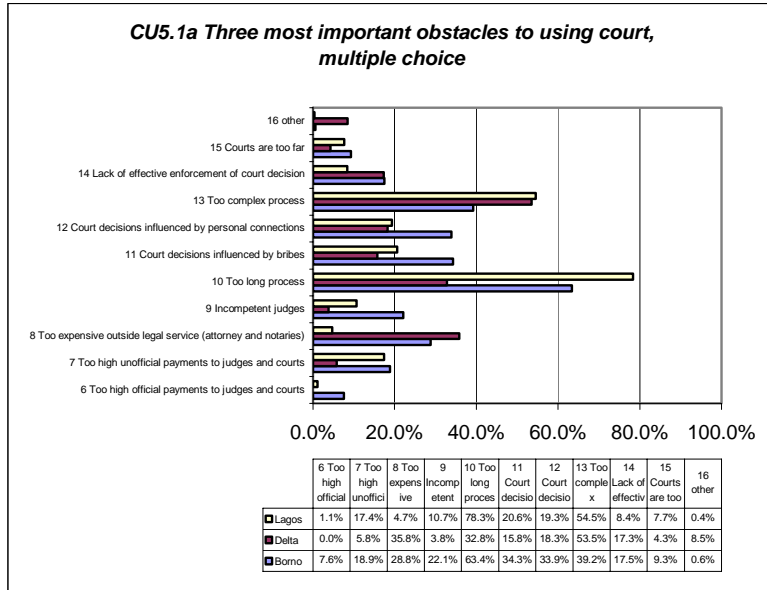
The court users were also asked to what degree they had been satisfied with the services provided in return for the bribe. Court Users in Borno seemed to be more satisfied, followed by those in Delta, and, to a lesser extent, in Lagos (*see CU13*).



Court users were further asked whether they had received any indication that they were expected to pay a bribe in order for the Police to initiate investigations. An average of 70% of the respondents across the three states claimed to have received indications that they needed to bribe the Police, with the police in Delta State being rated as the most corrupt, followed by the one in Lagos and then Borno.

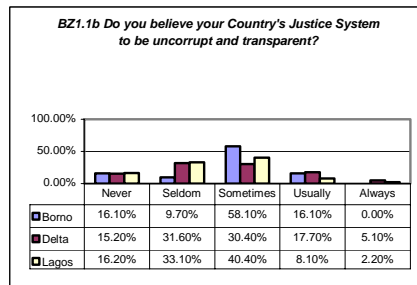


However, regardless of the high prevalence of corruption in the justice system, court users did not believe that corruption was the most predominant obstacle to justice delivery. The complexity and length of the justice delivery process were rated as even bigger problems (*see CU5.1a*).

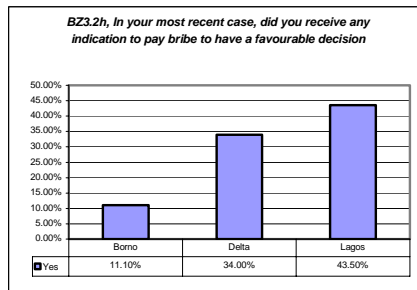


4. Business People

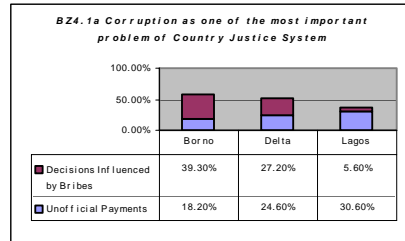
The perceptions of business people regarding the level of transparency and accountability of the courts were more pessimistic than those of court users. Only 10-20% believed that the courts were ‘always’ or ‘usually’ transparent, while 50% of respondents in Lagos, 45% in Delta, and 25% in Borno believed the justice system “never” or “seldom” to be transparent and incorruptible (see *BZ1.1b*).



When business people were asked about their concrete experiences with corruption in the courts, it turned out that the 43,5% of respondents in Lagos had received an indication to pay a bribe in order to get a favorable decision, followed by 34% of those in Delta, and 11% of those in Borno (see *BZ3.2h*).

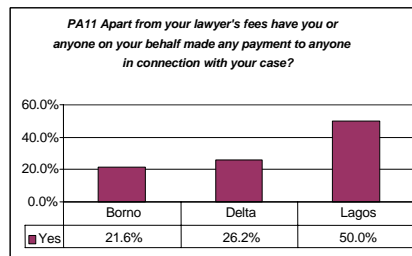


Regardless of the above, only 35% of the respondents in Lagos rated corruption in the courts as one of the most important obstacles to access to justice, while in Borno and Delta State, the percentages were higher with 58% and 50% respectively (*seeBZ4.1a*).

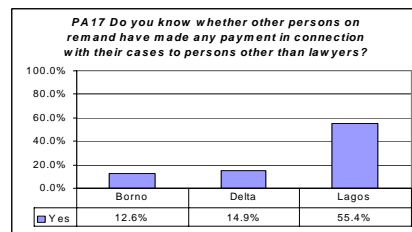


5 Prisoners awaiting trial

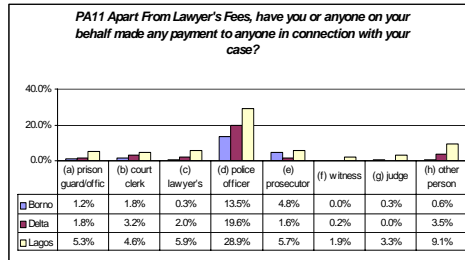
The survey explored the experiences of prisoners awaiting trial with regard to corruption in the justice system. When asked whether they had made any unofficial payment in connection with their cases, most of the prisoners denied that they had done so. In Borno State, 80% had made no payments beside their Lawyers’ fees. Also in Delta 75% had only made payments to their respective Lawyers, while in Lagos the percentage dropped to 50% (*seePA11*).



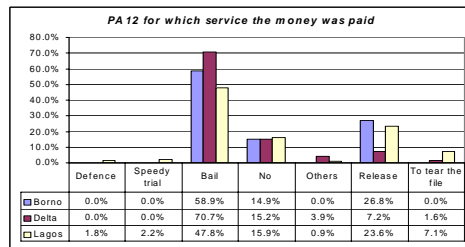
Since prisoners are in a particularly vulnerable position, hindering them to openly talk about corruption in the justice system, they were also asked whether they had knowledge of any of their peers having been asked to pay a bribe (*seePA17*).The results corresponded very much with those of the prior question, suggesting the reliability of their answers.



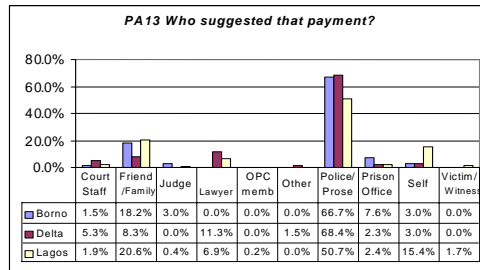
Moreover, those prisoners who had admitted having paid a bribe, were asked to whom they had made such payments. It turned out that, in the majority of the cases, bribes were paid to the Police. All other professional categories within the criminal justice system were far less likely to demand bribe or extort money from Prisoners (*seePA11*).



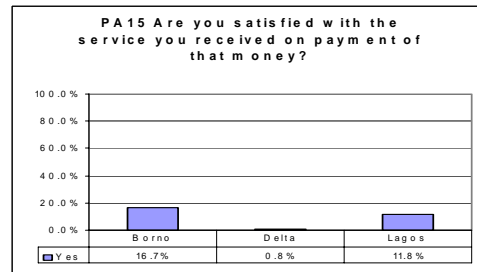
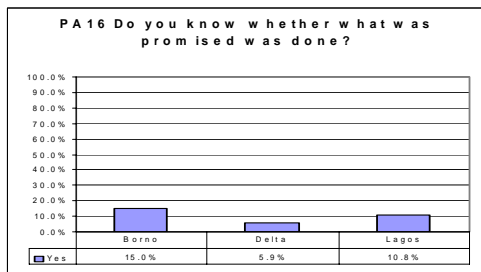
In the majority of the cases, bribes were paid in order to achieve, facilitate or speed-up the granting of bail, or to be released. However, about 15% also claimed that they did not even know for what they had paid the bribe (see PA12).



Prisoners awaiting trial were also asked to indicate who had suggested to make an unofficial payment. Apparently, in the absolute majority of the cases, it had been a police prosecutor, but also family members or friends suggested that it was necessary to make such an unofficial payment (see PA13).



However, in only very few cases, the recipient of the bribe did actually deliver the promised service (see PA16 and PA17).⁷⁷



⁷⁷ The low rate of delivery of the promised service may be understandable, when considering that the main reason for bribery among prisoners is to obtain bail. Being still in prison at the moment of the interview (presumably after paying the bribe) meant that the promised action had not yet been taken. One possible conclusion is that bribery in the prisons is much more widespread than the initial assessment of experiences suggests, since those who met the requests for bribes, are not likely to continue to be detained.

VII. CASE AUDIT

As part of the methodology to determine integrity of the judicial process, it was considered necessary to examine limited number of decided cases in the three pilot states. The essence basically was to distil from the cases the existence or otherwise of a coherent and consistent jurisprudential application or interpretation of the extant laws. Where it is found that there has been a misapplication of the law or rules of practice, then subject to the discretionary powers of the judicial officers, a claim of abuse of judicial powers will become inevitable

It was decided from inception to review 20 cases each from the three pilot states of Lagos, Delta and Borno. Land matters were considered crucial to the study and to that extent, it was agreed that 10 land cases should be reviewed in the three pilot states. As regards criminal cases, preference was given to criminal matters that are prevalent in each of the pilot states. Against this background, it was agreed that emphasis should be on the exercise of judicial discretion in the granting or refusal of bail applications to drug trafficking suspects in Lagos State, armed robbery suspects in Delta State and persons accused of theft in Borno State.

Ideally, the cases examined would have been extracted from the law reports. Regrettably, only few cases could be found for Lagos State. None was reported for Delta and Borno States respectively. The research team was left with no option than to visit the various State Judiciaries to obtain unreported Judgments. In some instances, it was even difficult to obtain sufficient number of cases to meet the set. This in effect made it difficult for the research to be selective in the choice of cases reviewed. But this does not in anyway suggest that the state Judiciary carefully selected untainted cases for obvious reasons. The research team was careful enough to ensure that the integrity of the case review is not compromised by a selection process that foreclosed the essence of the review by presentation of judgments with favourable conclusions.

It must be highlighted that not all the cases reviewed were limited to the High Courts. Theft cases in Borno State are by law handled by Magistrate Courts and Courts of co-ordinate jurisdictions. Bail applications in such cases are not made to the High Court. It is instructive to note that review of cases of courts lower than the High Courts broadened the scope of the research and made it truly representative as it afforded an opportunity to review the exercise of Judicial discretion in lower courts.

As far as land matters are concerned, all cases examined had, as their principal claims, the declaration of title over various pieces of land covered by either customary or statutory Certificates of Occupancy granted by either the local government or the State Governor, injunctions against the defendants, their agents, servants or privies from interfering with the peaceful possession of the disputed pieces of land, compensation for alleged damages as well as costs of the respective actions.

Reviewing the judgements from all three States, there was no evidence of questionable departure from the rules. In all three States the courts were careful not up stage the established principles of customary law on the issue of family land tenure system, even in a relatively urbanised environments as in Lagos State. For instance in all the cases examined, the issue of consent of head of the family was paramount to validity of sale of family land. This is epitomised by the confirmation of the Supreme Court of some of the decisions. in the case of *Jiaza v. Bangbose (1999)*

7 *NWLR (part 610) 182* where the court held *inter alia* that "a sale or lease of family land without the concurrence of the head of the family is void".

The same applies to criminal cases.. The case audit was not able to identify any indications for the abuse of substantial or procedural discretion. The case examined revealed that the Courts were consistent in the principles that guided them in the granting or refusal of bail to accused persons.

Bail pending trial is considered a Constitutional right und Nigerian Law. Being Constitutional right, the burden is on the prosecution who opposes bail to prove that facts relied upon by the applicant do not warrant the granting of the application. This is because there is a Constitutional presumption in favour of the liberty and innocence of the individual. However, in the case of post conviction bail, the position is different. The burden is on the applicant. This is so because the Constitutional presumption of innocence is gone by virtue of the conviction so also is the presumption in favour of liberty.

In practice, this principles translates into the following concrete considerations, when evaluating an application for bail. These are (1) the likelihood of an accused coming to his trial, (2) the seriousness of the charge; and (3) the duty of the prosecution to bring such facts to the notice of the Court [*Dogo v. Commissioner of Police (1980) 1 NCR 14 at 17* referred to (P. 341 paras D-E).

However, when the application for bail is submitted pending an appeal, the Court of Appeal will not grant bail unless there are exceptional and unusual reasons why bail ought to be granted to the applicant. The following factors will amount to very exceptional circumstances: (1) If the applicant being a first offender had previously been of good behaviour; (2) If substantial grounds of law are involved in the appeal, it is useful to see if there is any prospect of success on appeal; and (3) Where having regard to the very heavy congestion of appeals pending in the Courts a refusal of bail to the applicant would have the result of the whole or a considerable portion of the sentence imposed on the applicant being served, before the applicant's appeal can be heard.

The above principles were recalled and observed in all cases under review. The only departure was explained on the grounds of technicality. That was the granting of bail to Enwere in Case No. 7 *Enwere v. Commissioner of Police*. The reason given by granting bail in a murder case was that there was no charge for murder, thus the accused rights cannot be subjugated on a non-existence charge.

VIII. LEGAL ASSESSMENT

A. CRIMINAL LAW PROVISIONS

1. Bribery (Active Corruption)

Bribery as an offence is criminalized by series of legislations in Nigeria. These are the Corrupt Practices and other Related Offences Act 2000, the Criminal/ Penal Codes and the Electoral Act. There are a host of other legislations that have since been repealed with the enactment of the Corrupt Practices Act 2000. Sections 18-23 of the Act deal extensively with the offence of Bribery. Similarly the Criminal Code by virtue of sections 98, 98A, 98B, 98C and 98D provides sanction for Corrupt Practices including Bribery. Section 98(1) provides “Any public official (as defined in section 98D) who (a) corruptly ask for, receives or obtains any property or benefit of any kind for himself or any other persons; or (b) corruptly agrees or attempts to receive or obtain any property or benefit of any kind for himself or any other person on account of (i) anything already done or omitted, or any favour or disfavour already shown to any person, by himself in the discharge of his official duties or in relation to nay matter connected with the functions, affairs or business of an government department, public body or other organization or institution in which he is serving as a public officials, or (ii) anything to be afterwards done or omitted, or any favour or disfavour to be afterwards shown to any person, by himself in the discharge of his official duties or in relation to any such matter as aforesaid, is guilty of the felony of official corruption and is liable to imprisonment for seven years.

Section 98C deals with prosecution of Judicial Officers for offences under section 98 to 98B. It provides (1) A Judicial Officer cannot be arrested without warrant for an offence under section 98, 98A or 98B. (2) No proceedings for an offence under section 98, 98A or 98B shall be instituted against a Judicial Officer, except on a complaint or information signed by or on behalf of the Attorney General of the Federation or by or on behalf of the Attorney General of the State in which the offence is alleged to have been committed. (3) In this section “Judicial Officer” means, in addition to the officers mentioned in the definition of that expression contained in section 1(1)(a) a member of a native or customary court (b) a member of a juvenile court (c) an arbitrator, umpire or referee (d) a person called upon to serve as assessor in any civil or criminal proceedings (e) a member of a jury (f) a member of a tribunal of inquiry constituted under the Tribunal of Inquiry Decree 1966; and (g) any person before whom, under any law in force in Nigeria or any part thereof, these may be held proceedings in which evidence may be taken on oath.

2. Passive Corruption

The Corrupt Practices Act unlike earlier legislations on corruption addresses issues like gratification by an through agents (section 17); offence of concealing gratification (section 24); attempt to commit any offence under the Act (section 26) and offence of using office or position for gratification (section 19).

3. Fraud as Abuse of Public Power

The Corrupt Practices Act 2000 to a large extent deals with the offence of fraud by public officers. Whilst section 8 addresses the issue of gratification by an official, section 9 deals with corrupt offers to public officers. Also section 18 covers the offence of bribery of public officer. The Advanced Fee Fraud Act 1995 criminalizes by virtue of section 1 of the Act, obtaining

property by false pretence. Such false pretences include use of premises for the offence (section 3); fraudulent invitation (section 4); receipt of fraudulent letter (section 5); laundering of funds obtained through unlawful activity (section 7) conspiracy to commit the offence (section 8). All these fraudulent offences apply with equal force to public officers and are considered as abuse of public power.

4. Embezzlement as Abuse of Public Power

Embezzlement by public officers remains an offence by virtue of the provisions of the Special Tribunal (Miscellaneous Offences) Decree No. 20 of 1987. Other legislations against embezzlement are The Recovery of Public Property (Special Military Tribunals) No. 3, 8 and 14 of 1984. Others are the Exchange Control (Anti-Sabotage) Decree 1984, the Banking (Freezing of Accounts) Decree 1984. There is also the Civil Service Commission and other Statutory Bodies Removal of certain persons from office Decree No. 78 of 1984.

5. Extortion as Abuse of Public Power

Extortion is an offence known to the criminal code. Section 404 of the code provides: (1) Any person who, being employed in the public service of Nigeria, or in that of any other government, corruptly and under colour of his employment – (a) demands or takes property from any person; or (b) compels any person to sell any property at other than its fair market value; or (c) obtains lodging from and against the will of any person without payment or for inadequate payment; or (d) compels, whether partially or wholly for his own profit, any persons to work without payment or for inadequate payment; is guilty of a felony, and is liable to imprisonment for five years.

6. Illegal Political Party Financing

This is taken care of by section 225 and 226 of the 1999 constitution. Section 225(3) stipulates that “No political party shall: (a) hold or possess any funds or other assets outside Nigeria; or (b) be entitled to retain any funds or assets remitted or sent to it from outside Nigeria.

7. Laundering of Corruption Related Proceeds

Apart from the Money Laundering Act which deals with proceeds from illicit trafficking in narcotic drugs and psychotropic substances, the Corrupt Practices Act have provisions that tangentially deal with laundering of corruption related proceeds. Section 43 deals with investigation of share accounts. This allows for probing of corrupt proceeds that have been laundered. Similarly section 45 provides for seizure of movable property in Bank. The law by virtue of section 47 of the Act also provides for forfeiture of property upon prosecution for an offence.

8. Trading in Influence

Section 19 of the Corrupt Practices Act seem to have addressed the issue of Trading in Influence. The provisions specifically provide punishment for any public officer who uses his office or position to gratify or confer any corrupt or unfair advantage upon himself or any relation or associate of the public officer. Furthermore, section 22 of the Act, does partially talk of Trading in Influence, given the normal definition of the expression. It provides “Any person who, without lawful authority or reasonable excuse, offers an advantage to a public servant as an advancement to or reward for or otherwise on account of such public servants giving or using

influence in or having given assistance or used influence in (a) the promotion, execution or procuring of any contract or sub-contract.

9. Bribery of Foreign Public Officials

There is no direct enactment on this. But the general provisions on bribery and gratification as contained in the Corrupt Practices Act can be invoked against foreign public officials especially for offences committed in Nigeria. What is not clear is whether such provisions can be used against foreign public officials for corrupt practices committed abroad.

10. Offering and Acceptance of Gratification

Section 10 of the Corrupt Practices Act provides for this. The provision goes beyond offering and acceptance of gratification; it also covers those who ask for, receives or obtains property or benefits of any kind for himself or any other person.

11. Illicit Enrichment

The extant laws in Nigeria like the Code of Conduct Bureau Act and Corrupt Practices Act may not have adequately taken care of illicit enrichment in its technical sense, but there are a plethora of provisions especially in the Corrupt Practices Act to cater for this. Examples are sections 45 on seizure of Movable Property in Bank; Section 47 on forfeiture of property upon prosecution for an offence; section 46; prohibition of dealing with property outside Nigeria. It will however suffice for a new legislation to be made specifically to regulate illicit Enrichment.

12. Other Offences

A host of other offences are covered by the Criminal Code/Penal Code, Corrupt Practices Act and a plethora of other enactments that criminalize corruption. Section 14 of the Act deals with offences committed through postal system. Section 23 deals with duty to report bribery transactions. This provision was recently invoked in a matter concerning a commissioner with the Independent Electoral Commission who was accused of receiving gratification from a group of solicitors and the case was based on the report made by the solicitors who otherwise would have been implicated but for the fact that they reported/

The issue of Corrupt Practices by Political parties is also taken care of by the Act. Section 2 of the Act gave a comprehensive interpretation of the term "Political Party". Section 25 has gone further to criminalize making of false or misleading statement to the commission.

13. Extra Territoriality of Provisions concerning Corruption:

- a) The Corrupt Practices Act by virtue of section 66 gives jurisdiction over Acts of corruption committed outside Nigeria. The law also gives power to the commission to engage the service of Interpol.
- b) Corruption related offences for which extradition can be sought are Drug Trafficking, Advanced Fee Fraud, and Corruption as provided under the Corrupt Practices Act and the Criminal/Penal Codes.
- c) Government to an extent has a say in who is extradited. But this power (usually exercised by the office of the Attorney-General of the Federation) is exercised within the due Process of law. The Extradition Act is very clear on the rules and practices of Extradition

in Nigeria and all extradition matters must be in accordance with the procedure contained in the Act.

14. Criminal Liability of Legal Persons for Corruption

There is still no law that provides criminal liability of managers or heads of legal persons for corrupt practices within their area of responsibility. There is need for legislation on this regard.

15. Criminal Sanctions

Gratification by an official attracts a punishment of imprisonment for seven years (section 8(1)). Corrupt offers to Public Officers is punishable with 7 years imprisonment (section 9). Corrupt demand by persons has punishment of 7 years imprisonment (section 10). Section 14 provides punishment of 3 years and 7 years respectively for offences committed through postal system. Making false statement or return attracts a punishment of 7 years (section 16). Sections 19-25 provides variety of punishment for offences ranging from bribery to dealing with or concealing gratification.

In addition to deprivation of liberty as listed above, the law also provides for pecuniary penalty in many respects. The sanctions extend to seizure and forfeiture of assets and property.

A good example of section 20 of the Act which stipulates as follows “without prejudice to any sentence of imprisonment imposed under this Act, a public officer or other person found guilty of soliciting, offering or receiving gratification shall forfeit the gratification and pay a fine of not less than five times the sum of the value of the gratification which is the subject matter of the offence where such gratification is capable of being valued or is of a pecuniary nature, or ten thousand naira, whichever is higher.

16. Asset Forfeiture

a) *Direct Corruption Proceeds*

Section 45 of the Act deals with seizure of Movable Property in Bank. Section 47 provides that property can be forfeited upon prosecution. There are by virtue of section 48 circumstances where forfeiture of property can take place even without prosecution. An example is where the Judge is satisfied that such a property had been obtained as a result of or in connection with an offence under sections 8 to 19 of the Act.

b) *Property which Corresponds to that of Proceed*

The Corrupt Practices Act provided for this under sections 47-49 of the Act. Section 47(2) provides that “where the offence is proved against the accused or the property referred to in subsection (1) has been disposed of, or cannot be traced, the court shall order the accused to pay as a penalty a sum which is equivalent to the amount of the gratification or is, in the opinion of the court, the value of the gratification received by the accused, and any such penalty shall be recoverable as a fine”.

c) *Property, Equipment or other Instrumentalities used for Corruption Offences*

The Corrupt Practices Act provided for this under section 45-48.

d) *Transformed or Converted Proceeds of Corruption*

This is provided for under-sections 45 and 47 of the Act.

e) *Proceeds of Crime mixed with Property legally acquired; can the Property be confiscated.*

The law is silent on this but it does appear that the proper approach is to confiscate the property and push the onus on the accused person to prove what is legally acquired as distinct from what was illegally acquired.

- f) ***Income or Benefits Derived from Proceeds of Crime***
This can be seized from the bank by virtue of section 45 of the Corrupt Practices Act.
- g) ***Profits acquired as Consequence of Bribery***
The law is silent on this. There is need for provision to be made to accommodate this.

17. Other Sanctions

- a) ***Administrative Fine***
This is not provided for by extant laws.
- b) ***Deprivation of the Right to Perform certain Jobs***
The constitution of the Federal Republic of Nigeria 1999 disqualifies candidates for executive elective offices who had been convicted for fraud or offences involving dishonesty see section 137(i) (e).
- c) ***Listing of Companies***
Companies ordinarily may be blacklisted by administrative fiat for non-performance. It need not necessarily be for involvement in corrupt practices although black listing for corrupt practices is rather more important. There is need to legislate on this.
- d) ***Liability of Public Officials for Failure to Implement Measures to Combat Corruption.***
There is no legislation on this.
- e) ***Civil, Administrative Confiscation***
Sections 45 – 49 are adequate to cover this.

B. CRIMINAL PROCEDURE LAW

1. Witness Protection

There is no legislation protecting witnesses in fraud related or corrupt practices offences. This is very crucial for effective prosecution of corruption cases. What the Corrupt Practices Act did in section 64 is to protect Informers and Information. This is not exactly the same as protecting witnesses.

2. Undercover Operations

There is need for legislation on this. At the moment there is no law regulating undercover operations. What section 55 of the Anti-corruption Act has done is to make it possible for evidence of agent provocateurs to be admissible in court. That does not subtract from the need for detailed provision regulating undercover operations.

3. Random and Targeted Integrity Testing

There is no law on this. There is also no regulation governing integrity testing. In the absence of a law, at least it is desirable that there should be a regulation for it. It is however not out of place, that administratively, random and integrity testing are utilized by some agencies.

4. Wiretapping and Electronic Surveillance

There is no law providing for this. The prospect of enacting legislation must be viewed against the background of the constitution, which guarantees rights of privacy of individuals.

5. Access to Documents

There is a plethora of legislations that provides access to otherwise confidential documents. Examples can be found in Money Laundering Act and the Failed Banks Act. Section 19 of Money Laundering Act clearly provides that the Director of Investigation or an officer of the Agency authorized by regulations in that behalf may demand, obtain and inspect the books and records of a financial institution to confirm compliance with the provisions of the Decree.

6. Immunity from Investigation and Prosecution

The President, Vice President, Governors and Deputy Governors are immune from prosecution. However the Corrupt Practices Act in section 52 provides for the appointment of Independent Counsel in special circumstances to investigate officers mentioned above for alleged corrupt practices.

C. INSTITUTIONAL IMPLEMENTATION FRAMEWORK

1. Anti-Corruption Agency

The Corrupt Practices Act provides for the establishment of Independent Corrupt Practices and other Related Offences. Section 3(3) provides that the commission shall consist of a chairman and twelve (12) other members two of whom shall come from each of the six geo-political zones. Section 5 provides for the powers and immunities of officers of the commission. The general duties of the commission part of which is basically to receive, investigate a complaint and prosecute offenders are well stipulated in section 6 of the Act.

2. Ombudsman Commission

There is in existence the Public Complaints Commission, which is established by law. It has the same functions as the Ombudsman. The Public Complaints Commission has powers to inquire into complaints by members of the public concerning the administrative action of any public authority and companies or their officials, and other matter ancillary thereto.

The commission consists of a Chief Commissioner and such number of other commissioners as the National Assembly may, from time to time determine. The commission has the power to establish such number of branches of the commission in the states of the federation as the National Assembly may from time to time determine.

In any case where a commissioner discovers that a crime may have been committed by any person, he shall report his findings to the appropriate authority or recommend that that person be prosecuted.

The law empowers a commissioner to summon in writing any person who in the opinion of the commissioner is in the position to testify on any matter before him.

3. Specialised Units Within The Police

There are special units in the Police Force for fraud and corrupt practices offences. This is purely for administrative convenience and for efficiency.

4. Corruption Courts

In a sense there are no courts specially designated as corruption courts. However, there are courts among the State High Courts set aside specially to handle corruption cases.

5. Financial Investigative Units

Within the Nigerian Police Force, there is a unit that specializes in investigating financial crimes, fraud and corrupt practices.

6. Institution of The Inspector General of Police

There exists the office of the Inspector-General of Police. He is the highest-ranking Police Officer in Nigeria and administratively is the head of the Police Force. He is only answerable to the President.

7. Role of Mass Media

The media is very useful in the sensitization of the public against participating in fraudulent or corrupt practices. They can as well help to expose corrupt officers by “blowing the whistle” as and when the need arises.

8. Organisational Aspects of Implementation Mechanisms

Co-ordination in an Efforts by various Enforcement Authorities

Ordinary all enforcement agencies work towards a common objective. In this regard, the Police, Officers of the Anti-Corruption Commission, the State Security Services and officers of the National Drug Law Enforcement Agency are expected to co-ordinate their activities. In the interim, it does not appear that this is well streamlined but gradually all the concerned agencies are becoming alive to their responsibilities.

Central Contact point that can be used in cases of Corruption

The Anti-Corruption Commission by virtue of the Corrupt Practices Act is sufficiently empowered to handle cases of corruption. The commission administratively has investigative units as well as prosecution department. This makes the commission the central contact point for corruption cases.

Weak control structures: The Control Agency in Nigeria

The control Agency in Nigeria is the Anti-Corruption Commission. It is not proper to consider the control structures as weak. The law in this regard appears adequate and appropriate.

Existence of Independent Authority where claims can be made

As earlier mentioned, there is in existence a Public Complaint Commission, which is the equivalent of the Ombudsman. However, for corruption related matters, the Anti-Corruption Commission is the appropriate authority to deal with.

Existence of National Corruption Register

There is for the time being no register on National Corruption. The need for such register cannot be over emphasized.

Existence of Specialized Corruption Investigators and Technical Devices.

There is a unit of the Anti-Corruption Commission charged with the responsibility of investigating the authenticity or otherwise of petitions made to the commission. It can safely be assumed that they have all the necessary tools for carrying out their statutory function.

Professional Formation of Anti-Corruption Agencies

The Anti-Corruption Commission has an organization that is well defined by statute. The powers and functions of the Chairman, Commissioners and administrative staff are clearly stipulated by the law. The hierarchy of authority is also very well specified.

9. Procedural Aspects of Implementation Mechanism

Administrative and Criminal Procedure in Corruption Cases

Where there is a petition to the commission against a public officer alleging corrupt practices the commission by law is mandated to investigate the allegation if in fair case against the suspect. When the investigation is completed and commission finds sufficient evidence to commence prosecution, it sets the machinery in motion to prosecute. Bringing an accused person to court for corruption cases takes the same process as other criminal matters. As pointed out above, it is basically the responsibility of the commission to initiate prosecution for corruption cases. However, where the Police is the organ in charge of prosecution, then action can be commenced at the magistrate court. As stated, the accused as in all criminal cases is presumed to be innocent until proven guilty. After prosecution has made its case, it is left for the accused to put its case across. Expectedly, both sides are to lead evidence to prove or rebut the case. The court is then invited to rule either way. It is crucial to mention that being a criminal case proof must be beyond reasonable doubt.

Corruption – Related Case Loads

From information available in the commission, there are presently not more than 10 cases charged to court by the commission. However, where other corrupt practices like Advanced Fee Fraud, Money Laundering, Drug Offences and Bank Fraud are taken into consideration; there are presently 150 cases in various courts of record in Nigeria

There are about 150 cases presently being prosecuted. There may well be other cases with the Prosecutors that have not been filed in any court. This data is not available.

Sentencing

Most of the cases are still pending in court. As at date, the commission is yet to secure a conviction. Indeed most of the cases charged to court so far suffer serious set backs as a result of series of interlocutory applications.

Difficulties of Proving Cases of Corruption

One major difficulty is the unwillingness of witnesses to testify. This is as a result of lack of protection by law and indeed by the commission. Other difficulties are in the nature of interlocutory applications; high standard of proof in criminal cases, the standard of proof is beyond reasonable doubt; perhaps it should be added that poor investigative processes and inability to have certain allegation corroborated as required by law create difficulties in proving corruption cases.

Too Delayed Prone/ Contested Criminal Procedures

The criminal justice system is usually slow for variety of reasons. First is that there are limited numbers of Prosecutors handling many case files. This is further compounded by the fact that there is no mandatory summary trial. Interlocutory applications also create bottlenecks and ultimately delay the entire process. More significantly, witnesses are usually not forthcoming and this makes proof of evidence impossible. Delay is also experienced where the procedure stipulates that a prima case must be established before actual trial can commence.

Statutes of Limitation

Criminal cases in Nigeria endure in perpetuity. There is no statute of limitation for corrupt practices.

D. CIVIL LAW PROVISIONS

a) *Civil Remedies of "VICTIMS" of Corruption*

The Nigerian law does not provide for civil remedies in corruption cases.

b) *Compensation for the Damage Resulting from Corrupt Behaviour*

Nigerian law does not provide this.

c) *State Compensation for Damages Resulting from Acts of Corruption by Public Officials*

Nigerian Law does not provide for this.

d) *Validity of Contracts*

The law is silent on this. It is crucial that the law of contract as practiced under common law jurisdictions will invoke in determining the validity of contracts.

E. INTERNATIONAL JUDICIAL COOPERATION

1. International Legal Assistance Extradition of Offenders

Nigeria has treaty on mutual legal assistance on extradition and criminal matters with USA, UK, Algeria, Thailand and a host of African countries. The treaty has been ratified and is in force. However it does not appear that the treaty and assistance so far extends to Corrupt Practices. That notwithstanding the Extradition Act appears elastic enough to be invoked in cases of corrupt practices.

2. Seizure, Freezing, Confiscation and Return of Proceeds

Nigeria has mutual legal assistance agreement with USA, UK and Northern Ireland. Seizure and confiscation of assets apply when a prima facie case of corruption is established against the accused person or he has been tried and convicted by law. The essence of seizure and freezing is not only to preserve the proceeds but to ensure that neither the accused nor his heirs have access to the proceeds of corrupt practices.

3. Mutual Recognition of Foreign Criminal Sentences on Corruption Matters

The law against double jeopardy makes it imperative that foreign criminal sentences are generally recognized and respected in Nigeria. This also extends to sentences on corruption matters. However, agreement with USA and UK in this regard seem to have created sufficient avenue to strengthen the Extradition Act as far as these countries are concerned.

F. OTHER RELEVANT LEGISLATION

1. Code of Conduct for Public Officials

The Code of Conduct Bureau Act regulates the Conduct of Public Officers. The Enactment is a creation of the constitution. It provides against conflict of interest and empowers the Bureau to prosecute violation of the regulation in the Code of Conduct Tribunal.

2. Code of Conduct for Judges

There is in existence a Code of Conduct for Judges. It stipulates the minimum standards expected of Judges. It also regulates the conducts and activities of Judges in their day to day life.

3. Code of Conduct for Lawyers

There is a Code of Conduct for Lawyers. This is derivable from the Legal Practitioners Act. It provides for minimum standard of behaviour expected of Lawyers. It also stipulates sanction for breach of acceptable conduct.

4. Taxation Rules

There is a statute regulating all forms of taxation, be it income tax, property tax or commercial tax. The rules are specified. However, it should be noted that the incidence of tax evasion and avoidance is very high.

5. Freedom of Information

There is no categorical enactment that guarantees freedom of information. Indeed there are currently proposals for such enactment. However, many jurists and publicists argue that the freedom of expression clause contained in section 39 of the constitution may be given an elastic interpretation to cover issues involving freedom of expression. These notwithstanding, it is expected that a special legislation dealing with freedom of Information will be more useful and relevant.

6. Financial Disclosure Regulations

There is no law in force that provides for compulsory financial disclosure.

7. Accounting/Auditing Standards for Private Legal Persons

The Corporate Affairs Commission Act enjoins all private legal persons to prepare a comprehensive account of their company at the end of the financial year. Such accounts are expected to be audited by qualified auditors.

8. Accounting/Auditing Standard for Public Officials

The offices of Accountant-General and Auditor-General are by virtue of the constitution expected to ensure compliance with standards prescribed by the rules of public service with respect to financial matters.

9. Incompatibility of Public Office with Certain Jobs

In order to avoid conflict of interest, public officers are not expected to occupy or accept jobs that likely to conflict with the public offices they occupy. The constitution, Code of Conduct Act, Code of Conduct for Judges are some of the enactment that provides against conflict of interest.

10. Regulation of Public Procurement

There is no statute regulation of this. However, there are procedural or administrative guidelines that govern public procurement or award of contracts.

11. Whistle Blower Legislation

The need for whistle blower legislation in Nigeria cannot be over-emphasised. The Corrupt Practices Act unfortunately did not provide for this. For an effective implementation of the Corrupt Practices Act, it is highly recommended that whistle blower legislation should be enacted.