



A Treasure Trove of Information for Justice Reform

By Ingo Keilitz¹

Review of CEPEJ European Judicial Systems 2014 Report (2012 Data): Efficiency and Quality of Justice, European Commission for the Efficiency of Justice, 521 pages.

Every two years over the last decade, member states of the Council of Europe -- from Azerbaijan to Iceland -- report on the efficiency and quality of their judicial systems, reports that are compiled and analyzed by the European Commission for the Efficiency of Justice (CEPEJ).² The fifth biennial edition of CEPEJ's report, *European Judicial Systems – Edition 2014 (2012 Data): Efficiency and Quality of Justice* (hereinafter "Report"), was made public late last year. It is an evaluation of the judicial systems of 45³ of the 47 countries in the Council of Europe (Lichtenstein and San Marino did not provide data). A significant advancement over previous CEPEJ's evaluations, the Report is a treasure trove of information that deserves the attentions of policy makers and justice professionals, academics and researchers, especially those that are reform-minded.

Issues addressed in the Report include not only "supply" side questions (e.g., Numbers of courts within and across countries over time? Public expenditures for courts, prosecution, and legal aid per inhabitant?), but also "demand" side questions (e.g., Number of land registry cases handled by courts, if any? How are courts actually performing in terms of their case clearance rates and case disposition times?) These questions and many more are answered in 500-plus pages of text and over 250 figures and tables divided into 18 chapters, as well as two appendices containing the survey in its entirety and an extensive note with general comments and question-by-question explanations of each of the 208 survey items.

The database for the Report consists of the responses to CEPEJ's 208-item survey by "national correspondents" of the 45 countries, supported by CEPEJ members, observers, and experts. CEPEJ has done extensive work to verify and to improve the quality of the data submitted by the member states including frequent contacts with the national correspondents to validate or to clarify the submitted data.

The individual national replies -- invaluable complements to the Report -- contain more detailed descriptions and commentary on the individual justice systems entered in the "comments" area of most of the survey items. The national replies are available in their entirety on the CEPEJ website devoted to these "country profiles."⁴ They include, for most countries, survey responses over time, detailed commentary to survey responses, as well as the names and contact information for the local CEPEJ member and the national correspondent, as well as the identity and locations of pilot courts in the countries. These last features suggest enhanced local "ownership" of the evaluations of the individual justice system.

Interested readers can examine the Report at three levels of detail. First, they can begin at the highest level with the overview of trends summarized in Chapter 18 which include, for example, the following: (1) despite the recent economic and financial crisis, the development of judicial budgets remained a priority of public funds for a majority of governments,

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² CEPEJ is a unique body made up of qualified experts from 47 member states of the Council of Europe. For an overview of the history of CEPEJ, see the article that appeared in these pages by Pim Albers, a special advisor to CEPEJ since its beginnings. Pim Albers (2008). "Evaluations of Judicial Systems: European Experiences." *International Journal for Court Administration*, Volume I, No. 1, January 2008.

³ Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Republic of Moldova, Monaco, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Turkey, Ukraine, and the United Kingdom.

⁴ http://www.coe.int/t/dghl/cooperation/cepej/profiles/default_en.asp.

though there is uneven investment in judicial systems across countries; (2) emergence of “e-justice” and “e-courts” such as electronic filing, electronic databases of jurisprudence, electronic registers, electronic signatures, and automated case management systems; (c) simplified procedures, which are often less expensive and faster, both in civil (especially for uncontested claims) and criminal (for minor offenses) matters; (d) generally, courts are able to cope with the volume of cases but excessive length of judicial proceedings remains a major concern; and (e) a “glass ceiling” for women remain in 2012 a reality in the judiciaries.

Second, at a more in-depth level, much insight and understanding can be gained by a close reading and study of the Report including indicators of the governance, organizational structures, resources, operations, and performance of the justice system of the 45 countries organized into chapters – though the size and detail of the Report and its many figures and tables makes this no small undertaking. Further study and research can focus, for example, on a specific country, a single issue such as the enforcement of court decisions in criminal matters, or a comparative analysis across countries on one or more issues.

Finally, policymakers, practitioners, academics, and researchers who dig deeper into the data to gain insights that go beyond the borders of the member states of the Council of Europe are likely to be amply rewarded. For example, the Kenya Judiciary is making significant strides in the transformation of its judicial system with the launch of the Judicial Performance Improvement Project in 2012 supported by an investment loan from the World Bank. Using CEPEJ’s data and replicating its methodology in a relatively simple comparative analysis and benchmarking exercise, I was able to assess how the Kenya Judiciary’s efforts to build its capacity for performance measurement and management⁵ stack up against countries in the European Union (EU), the Council of Europe’s most important institutional partner, including 28 among the 47 states in the Council of Europe. Based on this simple exercise, I was able to conclude that the recent establishment of a system of performance measurement and management by Kenya Judiciary, including the creation of a directorate devoted to performance management, and regular monitoring and evaluation of court activities using standards and measures of efficiency and quality is exemplary and compares well with leading EU countries.

The Report is an invaluable resource for doing similar comparative analysis and benchmarking of judicial systems of countries that are not part of the Council of Europe. While this type of benchmarking is not necessarily a substitute for in-depth study tours of other justice systems, it merits a cost and benefit analysis.

The development and use of measures of justice and rule of law in global, national, and sub-national governance is increasing rapidly. There are arguments to be made for the superiority for evidence-based information in the CEPEJ 2014 Report compared to that of global indicators such as the World Justice Project’s *WJP Rule of Law Index* and the *Human Development Index* produced by the United Nations Development Program (UNDP), to name just two in an increasingly crowded field. The important factor that sets the CEPEJ Report apart from these global indicators is the source of data and who produced it or, to put it more pointedly, whose vision of justice it advances (i.e., international donors versus host countries or justice system exercising their legitimate authority). International justice development scholars⁶ argue and emerging research suggests⁷ that collaborative and “home-grown” assessments that are in alignment with local ambitions, and that source their data from host governments -- rather than from top-down, donor demanded program global indicators and evaluations produced by third parties -- are associated with more successful reform efforts.



⁵ Opening Remarks by Willy Mutunga, Chief Justice and President of the Supreme Court, at the Annual Judges Conference, Nairobi, August 18, 2014. See also, The Judiciary of the Republic of Kenya (2012). *Judiciary Transformation Framework 2012-2014*. <http://kenyalaw.org/kl/index.php?id=156>.

⁶ See, for example, Christopher Stone (2012). “Problems of Power in the Design of Indicators of Safety and Justice in the Global South.” In Kevin E. Davis, Angelina Fisher, Benedict Kingsbury, and Sally Engle Merry (eds.), *Governance by Indicators: Global Power Through Quantification and Rankings*. Oxford University Press.

⁷ Bradley C. Parks and Zachary J. Rice (2015). *The Marketplace of Ideas for Policy Change: Who do Developing World Leaders Listen to and Why?* Institute for the Theory & Practice of international Relations, College of William & Mary.