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Nigeria Rule of Law Assistance Project

**REPORT ON JUDICIAL BRANCH BUDGET TRAINING
STUDY TOUR TO THE UNITED STATES**

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I. Overview

The advanced course on judicial branch budgeting and budget study tour in the United States took place over two weeks in April and May, 2000. Participants included representatives of the federal and state judiciary, including judges, court administrators (known as registrars), staff to the National Judicial Council and court finance staff; the executive branch, including one region's ministries of justice and economic planning and development; and the federal legislative branch, represented by the chief staff to the Federal Judiciary Committee.

Training was provided through a guided discussion of budget issues, exercises designed to elicit input from the participants, and information concerning common budget practices in use in the United States. The course included a) a summary of the budget issues identified during the earlier budget training in Nigeria (see Attachment IV) and of the budget practices of jurisdictions to be visited during the study tour, b) visits to the administrative bodies responsible for the courts in the states of Maryland and Virginia and for the federal courts, c) budget and action plan training by National Center staff and consultants and d) development of action plans for the issues identified by the tour participants as most relevant in the Nigerian context.

The course was highly interactive with participants adding to and refining the issues identified. Pages 1-10 of the attached presentation materials (Attachment I) represent the issue identification stage of the course; several additions and refinements from the study tour participants are included. These issues also served as a guide for the site visits to court systems in the United States. After each site visit, the participants refined their understanding of the issues and of the practices in the visited systems. Summaries of the practices of the visited court systems are included in pages 11-31 of Attachment I; questions asked of the court systems in preparation for the training are included as Attachment II.

Throughout the study tour, participants worked to prioritize the issues. The ultimate goal of the training was to assist participants in identifying alternative solutions to and developing action plans concerning the most salient budget issues facing them.

II. Course Topics and Issues

The budget course itself was divided into six primary focus areas that were identified as the most significant through the course of the earlier training in Nigeria and for which visits to courts in the United States could offer the most guidance.¹ Those issues were:

- the role of the branches of government in the budget process,
- development of judicial branch financial policies,
- issues surrounding state government authority in judicial branch affairs,
- strategic planning,
- functioning of the National Judicial Council, and
- improved financial capabilities at individual courts.

A substantive discussion of each of these areas was included in the consultant's February, 2000 report concerning the budget training conducted at the pilot sites in Nigeria and will not be repeated in full here. The discussion below provides an overview of the material presented and a discussion of the responses of course participants. The action plans developed and suggestions for future training and other steps follow.

A. Role of the Branches of Government

Significant time was spent discussing the structural changes that would be required for a successful and efficient relationship between the three branches in budget development.

In general, the study tour participants believe the role of the executive branch in the judicial branch budget should be limited. Clearly, the executive's responsibility to set the overall size of the budget and determine whether mid-year adjustments are needed to meet fiscal circumstances constrains the amounts available for allocation to the judiciary by the legislative branch. In two of the three systems visited, the executive branch retains the power to reduce judicial branch budgets in times of crisis but this power is rarely, if ever, invoked.² Direct control by the executive branch over the amounts provided to the courts is in place only in Virginia, where formula-based budgeting and positive working relationships between the branches (see discussion below) has resulted in little interference in judicial branch financial affairs by the executive branch. Study tour participants are seeking to eliminate direct executive branch involvement in approving judicial branch budget requests in parallel with many U.S. jurisdictions.

¹ See Attachment IV for a list of recommendations made at the conclusion of the training in Nigeria.

² The federal executive branch seeks to indirectly control the amount of funding provided to the judiciary by means of a "negative allowance" applied to the entire federal budget in an amount equal to that the executive should be reduced from the judiciary's budget. This places Congress in a position of either accepting these reductions to the judiciary's budget or finding other places to make reductions.

Without altering the fundamental funding relationship between the executive and judicial branches in Nigeria, vast improvements could be made in the current budget system by creating mechanisms to insure that funding is provided on a regular and reliable basis. As discussed in the earlier report, in order to plan programmatic improvements and develop as a branch of government, the courts need more certainty that at least an identified portion of allocated funds would be made available to them on an annual, quarterly or monthly basis. In each of the three systems visited, the judicial branch is allocated all of its funding to the central administrative office of the courts at the onset of the fiscal year and then distributed to individual court systems. Some study tour participants suggested that a fixed percentage of the federal budget be provided to the judicial branch at the outset of the fiscal year.

Information from the Executive Branch concerning revenue projections and actual revenue collections would have to be made available generally and to the legislative and judicial branches specifically. The judicial branch would need to be represented on the federal allocation committee that makes ongoing decisions about allocation of available revenues. This is particularly important in Nigeria where revenue collections vary significantly over time. In contrast, this issue was not relevant to any of the U.S. jurisdictions visited. These three specific interbranch issues – regular and reliable allocations, transparent information concerning revenues available to the federal government and representation of the judiciary in forums determining allocations – represent the most pressing issues identified by the study tour participants. Action plans for resolving them were developed (see below). However, of the items included in action plans, these are probably the most difficult to accomplish because of likely executive branch opposition.

B. Development of Judicial Branch Financial and Management Policies

General Financial Policies

A second area of emphasis was development of specific financial policies applying to the judicial branch in the areas of movement of appropriated funds, staffing authority, carry forward of unexpended amounts, establishment of reserve funds, provision of staff cost of living increases and establishment of separate judicial branch accounts.

During the course, it became clear that the extensive level of detail at which funds are appropriated to the Nigerian judiciary (at a subobject level) prevents the courts from operating flexibly. The national constitution does not permit moving funds across appropriation categories (known as viament) in order to avoid the possibility or appearance of corruption. Thus, it was determined that a critical first step in providing needed financial and operational flexibility to the courts is to broaden the appropriation categories used by the National Assembly. The Virginia and federal court systems use very broad appropriation categories; while funds are appropriated on a more detailed basis in Maryland, courts there have the authority to move funds between categories.

Participants also discussed desirable restrictions on the judicial branch's authority in the above areas (e.g., should the judiciary be permitted to carry forward operating as well as capital funds; should courts be permitted to fill positions at levels other than those approved in the budget) and the appropriate judicial body (e.g., the National Judicial Council or the individual court system) to whom authority should be granted in each case. A precursor of these reforms would be the creation of separate judicial branch accounts for each court system into which funding would be deposited, instead of funding being deposited with the executive branch.

A discussion of the policies in effect in each of the visited U.S. court systems, including any restrictions and the level at which these policies are administered, is included on pages 14-18 of Attachment I. Study participants also highlighted this issue as critical; action plans for resolving it were developed (see below).

Management of Capital Projects

The Nigerian study tour participants are also seeking greater self-management by the judiciary of capital projects but members of the delegation differ in the degree of autonomy that would be appropriate. Alternatives include increased consultation with the judicial branch in the development of capital projects, allocation of capital funding to the court but project management retained by the executive branch and allocation of capital funding to and project management by the judiciary.

Executive branch representatives expressed some reluctance to allow the judiciary to control funds appropriated by the state legislature for capital projects, reiterating that a) the courts do not have the professional staff necessary to manage capital projects, b) the executive branch would like to review amounts appropriated in the budget mid-year to insure that the cost estimates are not inflated and c) funds must be held back because the revenue streams for state governments are not certain.

In the U.S. jurisdictions visited, this was the area in which the executive branch had the most authority in judicial branch affairs, with funding and project management retained by the executive branch.³ The visited jurisdictions are seeking greater direct control over capital projects for the judiciary. However, the visited jurisdictions emphasized that by engaging in long-range capital planning based on filing and other trends, developing design standards for court facilities, and maintaining involvement while projects are under construction, the judicial branch is currently able to significantly influence the quality and quantity of court facilities provided.

This issue was believed to be of long-term significance but of less pressing concern than the other issues entailed in inter-branch relations.

³ It should be noted that in the United States, "capital" refers primarily to construction, refurbishment and maintenance of court facilities. In Nigeria, in contrast, "capital" is an expansive term understood to "special expenditures", including large equipment items (e.g., automobiles), small office equipment and what in the U.S. would be termed materials and supplies (e.g., forms, judges' robes).

C. State Government Authority in Judicial Branch Affairs

Budgetary Authority

The Nigerian national constitution calls for the National Judicial Council to “collect, control and disburse all monies, capital and recurring...” Despite this clear mandate, funding of state judiciaries in Nigeria continues to be divided between the national and state governments, with the national government funding the recurrent budget and the states funding the capital portion of the budget.⁴ In addition, the states continue to be the recipient of all court fees and fines even though they received significant fiscal relief when the federal government agreed to fund the operating costs of the courts. The participants determined that, while the appropriate level for funding capital expenditures and receipt of court-generated revenues by the state need to be resolved in the future, there was not a consensus about the desirability of moving to full federal funding of state judiciaries. In any event, these issues were of less immediate concern than many of the others identified.

Staffing Authority

However, resolution of another arena of state authority was considered critical by the participants. The executive branch at the state level retains the authority to set staff salaries and determine the number of court staff through their Offices of Establishment, even though ongoing staff costs are funded by the national government. Since staff salaries represent a large portion of the operating costs of the courts, this renders much of the budget decision making process on the federal level meaningless. In the U.S. jurisdictions visited, the judicial branch was provided with a lump sum amount for staff salaries through the budget process, with the chief judicial body (the equivalent of the National Judicial Council) allocating funding to individual courts based on existing salary costs and cost of living increases.

Most critically for the study participants, in several states in Nigeria, including Lagos, the state Office of Establishment control hiring and discipline of court employees and some staff of the court (particularly in the accounting and secretarial support) are actually employees on loan from the state executive branch, impeding judicial branch independence.⁵ In other states in Nigeria, the state Judicial Services Commission, chaired by the Chief Judge of the state, makes those determinations. In the case of the U.S. jurisdictions visited, the authority to hire and fire individual employees and to decide when to fill positions is held by the judicial branch. The participants recognized that the current practices in place in all Nigerian state courts and the federal system should be considered before decisions were made about the preferred personnel system for the courts. Action plans for resolving this issue were developed (see below).

⁴ The federal judiciary is entirely funded by the federal government; the discussion of funding arrangements is thus not relevant to those courts.

⁵ In some cases, staff are moved between the executive and judicial branch at the discretion of the executive branch.

D. Judicial Branch Strategic Planning

Two primary functions of strategic planning continued to be stressed, namely:

- developing long-range and annual goals, in part to support budget preparation and submission, and
- informing the other branches about the importance of court operations to the functioning of government and specific financial needs of the courts

As discussed in more depth in the previous report, the Nigerian judiciary currently does not have strategic plans at either the national or state level, possibly because simply receiving disbursements of allocated funds absorbs much of the judicial branch's attention. Strategic planning would assist the judiciary in setting and pursuing set objectives instead of simply responding to directives and financial mandates from the other branches.

Consensus between and among representatives of the judicial, legislative and executive branches regarding the judicial branch's role in Nigeria would be the foundation for any coherent budget process. Without a strategic planning process, the courts cannot begin to view themselves as stewards of the funds provided to them nor will the other branches be likely to grant the judiciary the necessary authority to do so.

The Virginia state court system and the federal judiciary have strong strategic planning efforts in place which emphasize the impact of the court system on other public agencies, litigants and the public. All three systems devote considerable energy to providing general background as well as detailed programmatic information to the legislative and executive branches, using both judges and judicial branch staff in this effort. The U.S. jurisdictions indicated that substantial success in receipt of requested funds emanates from their ability to relate the needs of the courts in a strategic and coordinated fashion.

While participants continued to find the strategic planning discussion very enlightening, more pressing concerns related to budget allocations, the role of the branches of government, and control over judicial branch resources and staffing were selected for immediate action planning.

E. Functioning of the National Judicial Council

A primary focus of the study tour centered on developing the proper relationship in budgetary matters between the National Judicial Council and the individual courts and improving the capabilities of the Judicial Council.

The National Judicial Council staff has a vital role to play in the process of reviewing and recommending budget requests from courts, compiling and submitting final annual

budget requests on behalf of the council, and providing technical assistance and support to courts in development of annual budget requests.

Sufficient National Judicial Council Staffing

The National Judicial Council does not have adequate resources to function in the role assigned to it in the constitution. At the time of the course, the National Judicial Council continued to have only two staff with roles in the national judicial budget process: the Secretary, who was serving in an acting capacity on loan from the Judicial Service Commission and a budget analyst. Action plans for resolving this issue were developed (see below). Resolution of this item is considered a precursor for development in the areas discussed below.

Budget Process

Discussion of the functioning of the National Judicial Council focused on improving the budget process, rather than on changing the form and content of budget requests. All participants agreed that this was an area of focus for the next year.

While the Judicial Council performs nominal review of budget requests for reasonableness, insuring, for instance, that requested judicial positions have been approved, it does not currently play an active role in evaluating or prioritizing budget requests. Last year, the NJC used the “budget call” letter⁶ developed by the executive branch to initiate the budget request process among courts. The NJC has also not provided a forum for state courts to discuss their budget requests.⁷ Finally, there is not an established process for allocating appropriated federal funding to the courts when it is, as is common, less than the original request. The pilot courts in Nigeria indicated that allocated amounts do not match their submissions and that they are not aware of why specific reductions were made by the National Judicial Council in response to reductions in the requested appropriation by the National Assembly.

Examples of well-developed budget processes were provided by the visited jurisdictions. Key in the success of these efforts are involvement by representatives of the courts. In Virginia, advisory committees comprising representatives of the district and circuit courts review requests from the courts; on the federal level, seven program committees and the budget committee of the Administrative Office of the Courts review requests from the federal courts.

Creation of a coherent budget process was deemed critical by the study tour participants and was the subject of action planning (see below).

⁶ The document setting out the budget policies, procedures and priorities for the year’s submissions.

⁷ Federal courts were invited to discuss their budget requests with the NJC during last year’s budget process.

Budget Formats

As discussed in the earlier report, programmatic budgeting could assist the Nigerian judiciary by informing strategic planning and prioritization as is the case in Virginia and the United States federal courts. The visited jurisdictions confirmed that program budgeting allows organizations to cast the discussion with funding agencies in terms of what the organization is trying to accomplish in broad terms and better supports a strategic planning and budgeting effort.

However, the budgets for all Nigerian government entities at the federal and state levels are developed on a line-item basis. Providing a budget on a programmatic basis for the judiciary alone might not be feasible. A system under which the courts provide programmatic justifications to the National Judicial Council in focused area as well as line-item detail that could be forwarded to the Ministry of Finance and the National Assembly has workload implications.

Federal and state governments in the Nigerian pilot sites also do not currently reexamine baseline expenditures to insure current programs are needed and operate effectively. The National Judicial Council could consider a modified form of zero based budgeting, requiring court programs to be justified in their entirety on a rotating basis. This is the system in use in the Maryland court system.

Consolidated or Individual Budget Submissions

The Nigerian National Judicial Council forwards requests from the state courts to the executive and legislative branches as individual state submissions, not as integrated requests for branch-wide programs. This leads to discussion and determination by the National Assembly of each court system's budget and reduces the ability of the judicial branch to promote national judicial goals.

In the systems visited, the budget is developed based on requests from individual court systems but then expressed and funding appropriated on a statewide basis for each level of court (Supreme Court, courts of appeal, general jurisdiction trial courts and limited jurisdiction trial courts). Detail concerning the expenditures and needs of individual court jurisdictions is provided as supporting documentation. Allocations are provided to the central administrative arm of the courts with reductions made to the budget as a whole rather than to the individual court systems.

Despite the recognition among study tour participants that programmatic and zero based budgeting and provision of budget requests to the National Assembly on a national, rather than court-by-court basis could strengthen the judiciary's budget system, participants did not prioritize making reforms in the budget format given more pressing needs.

Performance Standards/Workload Formulas

The Nigerian judiciary has not developed performance measures for any of its programs against which budget requests could be evaluated by the National Judicial Council and justified to the other branches of government. Measurement of the financial impact of workload increases would also benefit the courts.

Each of the jurisdictions visited has developed rigorous judgeship needs and staffing standards based primarily on weighted caseloads. The federal courts have, in addition, developed funding standards for non-staff support costs, with 95% of the federal budget being formula driven. The federal Administrative Office of the Courts utilizes these formulas to make downward as well as upward adjustments in individual courts' budgets. Representatives of the federal courts commented that using formula-driven budgeting discourages courts from unnecessarily spending funds in order to guarantee a given funding level in the subsequent year. While impressed with these systems, the Nigerian participants again felt that these innovations could be introduced at a later date.

Development and Use of Financial Reports

The Council is in the process of creating financial reporting instruments. Thus, while this is viewed as a critical task, the study tour participants did not undergo action planning for this item.

F. Individual Court Capabilities

The individual courts have generally established systems to perform basic budgeting functions. For example, courts develop data to support new allocations, defend budget requests before state bodies, implement the budget within the court, monitor expenditures and program performance and make mid-year adjustments. They do not currently prepare and defend budgets in the manner discussed in the previous report nor are they necessarily structured to provide the type of strategic planning and financial oversight envisioned for the judicial branch. The pilot courts determined that an assessment of the financial staffing needs and preferred structure of judicial branch financial operations should be developed. Action plans for resolving this issue were developed (see below).

In addition, participants recognized that exposure and access to technological tools commonly available elsewhere would have a dramatic impact on the ease of instituting these methods. For example, consistent, automated systems for collecting and tracking court expenditures would make monitoring and budget planning much simpler for both the courts and the National Judicial Council. With funding, this specific issue could be ameliorated. It was, however, felt to be less critical that developing adequate and appropriate financial staffing for the courts.

Because the study tour visited central court administrative offices rather than individual court systems, no attempt was made to assess the adequacy of local court financial staff or automated systems in the visited jurisdictions.

III. Action Planning

From the plethora of issues presented to the group from the training in Nigeria, the study tour selected twelve areas as having the most salience in their courts:

- Regular and reliable funding; representation at meetings where funding distributions are discussed; transparency of amounts available in the Consolidated Revenue Funds
- Increased staff for the National Judicial Council/financial staff for courts
- Budget defense before and information from the National Judicial Council
- Budget flexibility in areas of movement of funds, carry forwards and reserve funds, with restrictions. It is recognized that budget flexibility is tied to strict compliance with financial regulations
- Self-management of personnel with respect to hiring, discipline and determination of when to fill positions, subject to budgetary allocation
- Self-management of capital projects with evaluation of completion of projects by the Ministry of Works. Establishment of allocation installments to allow projects to proceed on a predictable schedule.
- Compliance with financial regulations, including expenditure and revenue reporting; provision by the National Judicial Council of formats for reporting and accounting for funds expended and received; establishment of auditing procedures.
- Annual reporting of accomplishments to the National Judicial Council and National Assembly.
- Determination of which level of government (federal or state) is to fund capital projects; if capital funding becomes a federal responsibility, determine whether funds previously expended by states in support of the courts should be swept to the federal level.
- Recategorization of special expenditures (e.g., small equipment and materials and supplies, in contrast to major capital expenditures such as facilities and automobiles) as recurring, rather than capital, items in recognition of their ongoing nature and link to personnel expenditures. This would result in these expenditures becoming a federal responsibility.
- Computerization of courts to allow on-line communication with NJC. Includes word processing, internet and intranet access, data networks, and training of staff.

- Revenue retention without supplantation of existing federal and state funding; review of fee levels.

The study group further prioritized the first five areas, for which action planning was completed, with some analysis of steps to be taken in the remainder of areas.

Training in action planning was provided by National Center staff. The group completed action planning using the **SMART** approach:

Specific
Measurable
Attainable
Realistic
Time frame

The action plans for the five focus areas are found as Attachment III.

IV. Additional Technical Assistance Needs

Throughout the study tour, areas were identified for which an understanding of common practices in other jurisdictions could prove useful:

- 1) Revenue projections
- 2) Terms of provision of funds to the judiciary, for example, the period of funding (e.g., monthly, annually) and whether it occurs in arrears or in advance of expenditures.
Putting alternative practices into place will require significantly greater transparency concerning the revenues available to the federal government.
- 3) Revenue collections
- 4) Expenditure reporting
- 5) Standardization of accounting practices at NJC and state and federal courts
- 6) Use of reserves
- 7) Computerization of payroll
- 8) Year-end accounting

It is recommended that the Nigerian pilot sites receive technical assistance in each of the above areas from experts from a variety of jurisdictions.

Attachment II
Questions for Participating Courts

Budget format -- programmatic, line-item, mixed (copy)
Any zero base budget justifications (e.g., on a rolling basis)

Level of review by executive branch

Involvement by courts in cross-branch forums

Authority for courts to:

- Move funding
- Carry forward funding across fiscal years
- Create reserves

Statutory or rule authority for disbursement of funds to the courts; any continuation funding?

Manner in which cost of living increases are provided