

**THE SYSTEM OF JUSTICE IN BOLIVIA:  
AN INSTITUTIONAL ANALYSIS**

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Esta monografía analiza la Administración de Justicia en Bolivia en un contexto de transición a gobierno democrático después de un prolongado período de autoritarismo militar. Provee un bosquejo histórico de la compleja relación entre el sistema de justicia y la política boliviana. Describe a cada actor institucional con particular énfasis sobre el procedimiento de justicia criminal y analiza los problemas principales del sector. La monografía sostiene que el fortalecimiento de la Administración de Justicia es un paso fundamental hacia la consolidación democrática en Bolivia.

This monograph analyzes the administration of justice in Bolivia within the context of transition to democratic rule following a prolonged period of military-based authoritarianism. It provides a historical overview of the complex relationship between the system of justice and Bolivian politics. It describes each institutional player with particular emphasis on the criminal justice system and analyzes key problems facing the justice sector. The principal assumption of this monograph is that strengthening the administration of justice is a fundamental step towards the consolidation of democratic rule in Bolivia.

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## **PREFACE**

The Center for the Administration of Justice (CAJ) was founded in 1984 at Florida International University (FIU), a member of the State University System of Florida. Its purpose is to engage in research, training and public education on the administration of justice in Latin America. With offices in Miami and San José, Costa Rica, CAJ has become a unique international resource at the forefront of justice sector reform in the region.

The Center's goal is to encourage dialogue and policy reform for the criminal justice sector in Latin America.

CAJ employs a multidisciplinary and international staff of specialists, including lawyers, political scientists, public administrators and public policy analysts. Many are former justice officials with experience and skills in administration of justice issues.

The CAJ has become a leading source of information and leadership on issues relating to the administration of justice in Latin America. Its assessments have been widely disseminated and have been influential in public policy decision-making throughout the region.

This document is one of the results visits to Bolivia by staff members and consultants from the Center. In the course of the visits, FIU's team held interviews with high government officials, both outgoing and incoming, politicians, academic leaders and other public figures. Attempts were made to have a balanced participation from all sectors of the political spectrum. Thereafter, the author has updated and confirmed many of these preliminary findings.

The author wishes to recognize the important contributions of the following researchers in the preparation of this monograph: José María Rico and Luis Salas.

## INTRODUCTION

This monograph represents a first descriptive approach to a situation that will require deeper research. It is not meant to offer a definitive analysis of the Bolivian justice system within the current political context. It highlights relevant features of the country's extremely complex political and institutional reality and seeks to illuminate some of the main issues currently debated in that country.

This analysis is based on a conception of the administration of justice as a system made up of regulations, institutions and formal and informal processes. The system operates within a political context and its actors are institutions from the different branches of government (National Assembly, Attorney General's Office, Judiciary, Police, etc.), as well as other institutions responsible for the academic preparation and regulation of the human resources of the system such as law faculties, and bar associations.

This document describes each of the institutional players with particular focus on the criminal justice system. The state of criminal justice in a country is a key indicator of how a society protects the individual citizen and the community as a whole from actions which threaten their peace, safety and human rights.

This monograph also provides a historical overview of politics and justice as a basis for understanding the present justice institutions. Treated in turn are: The Legislative Branch, the Attorney General's Office, the Police, the Defense, and the Judiciary. Due to its importance, a separate section is devoted to narcotics, U.S. policy and the impact which attempts to curb trafficking have had on justice institutions.

## Description of the Country

With 424,000 square miles-1,098,581 square kilometers (about the size of Texas and California)-Bolivia is the fifth largest country in South America. Present day Bolivia, however, is roughly one-half the size it was when it gained independence. Defeated in the War of the Pacific, 1879-1882 (Peru and Bolivia versus Chile), Bolivia lost its seacoast and is now a landlocked country. In the first decade of this century Bolivia also lost territory to Brazil. A later and even more humiliating defeat came during the Chaco War with Paraguay (1932-1935). Each and every one of these international disasters has played an important role in shaping Bolivia's political culture. In fact, the Revolution of 1952 that fundamentally transformed this Andean nation was largely the result of the contradictions in Bolivian social, economic, and political life that were magnified by the conduct of the Chaco War.

Maintaining domestic sovereignty has also been problematic. In spite of constitutional structures that reflect a strong presidential tradition Bolivia continues to be one of the least integrated nations of Latin America. Nevertheless, presidents have rarely achieved control over all of the diverse regions of the country or the legislative branch in La Paz.

The fundamental historical weakness of the Bolivian state can be attributed to many factors. Relative to its geographic size, Bolivia has a very small population (in 1990, 6.5 million). Historically the bulk of this population has been rural (still 52 percent); over one half of which is concentrated in the Andean departments of La Paz, Oruro and Potosi. Less than one fourth of the population lives in the eastern interior that constitutes 59 percent of the national territory. As late as the 1950s less than 2 percent of the arable land was under cultivation. In 1988 only three cities have a population of over 200,000 and only two La Paz and Santa Cruz, surpassed .5 million (La Paz, 1,049,800; Santa Cruz, 615,122; Cochabamba, 377,259). Both its geographic expanse and ethnic diversity present unique problems of access and delivery of services to the administration of justice.

Bolivia's relatively small population has been fragmented along racial, ethnic, and cultural lines. Some 60 percent of the population are racially and culturally Indian, and these, in turn, are divided into 60 percent Quechua speakers and 40 percent Aymara speakers. Until 1952 the bulk of the Indian people were locked into the hacienda system of landholdings, and the only authority they knew was that of their *patrón* (landowner). Around 30 percent of the population is racially mixed (mestizos) and less than 10 percent are of white extraction. Historically, whites have dominated the social, economic, and political life of the country, with mestizos and Indians in subordinate positions. These groups have always maintained different and hostile racial and cultural identities, which have undercut any sense of common national identity. In fact, the justice system in Bolivia has often been discriminatory toward Indian and mestizo groups.

Moreover, racial and cultural diversity has been exacerbated by geographic and regional diversity. Bolivia divides into three distinct topographical regions: the high plain (*altiplano*) located within the Andes Mountains at heights over 12,000 feet (3,657 meters); the semitropical valleys called *yungas*; and the *llanos*, or lowlands, of the Amazon Basin. Until recently rail and road links between these regions were minimal, and vast stretches of the country are accessible only by air.

Topographic diversity and economic realities have contributed to intraregional rivalry in Bolivia. Since the colonial period (1550-1825) the economy of Bolivia has relied on the export of minerals, primarily silver until the mid-nineteenth century. Since the 1880s tin has been the main export, although with the collapse of the tin market in 1985 the economy has come to depend on the

export of oil and natural gas.

The political life of the country has reflected this underlying economic structure. Silver was extracted from the southern mountains of Potosí, and during the period of silver's predominance the capital was located in the nearby city of Sucre. Tin, on the other hand, has been mined from the more northern districts of Oruro and La Paz. With the rise in the importance of tin, the capital shifted to its present location in La Paz. Currently, the bulk of the oil and gas production has come from the eastern regions, especially Santa Cruz, with the result that that city has begun to challenge La Paz both economically and politically.

In the 1980s, with the rise of the coca-cocaine industry a number of new dilemmas and problems have emerged which Bolivia appears peculiarly incapable of handling alone. This multitude of regional, cultural, racial, class, and other problems present a significant challenge for the administration of justice in Bolivia.

### **Brief Historical Background**

In 1991 Bolivia celebrated nine consecutive years of civilian rule. Considering the nation's history of political instability and turmoil, the longevity of the current democratic period marked a significant achievement. Clearly, democracy did not come easily to Bolivia; only when other alternatives were exhausted did the country's political leaders accept representative government.

Between 1978 and 1982, seven military and two weak civilian governments ruled the country. Coups and countercoups characterized one of the darkest and most unstable periods in Bolivian history. The unsolved dilemmas of the MNR-led (Movimiento Nacionalista Revolucionario) revolution, worsened by decades of corrupt military dictatorships, accounted for Bolivia's convoluted transition to democracy.

The roots of Bolivia's system of government can be traced back to the Quechua and Aymara kingdoms, both of which developed sophisticated forms relying on strong legal systems. The structures of the Aymaras's "confederative" form of government included **ayllus** or communal clans, which were ruled by **jilacatas**. A confederation of **ayllus** was led by elected authorities called **mallcus**. Appointed people's assemblies, or **ulakjas**, composed of elders, deliberated on matters of state. Under the monarchical system of the Quechuas, each **ayllu** was led by a **camayoj** or **curaca** and its council of elders. The four provinces, or **suyus**, each had a leader, the **khapaj-apu**, who governed with a council of elders whose resolutions were compulsory; the council was divided into three sections (war, justice, and finance). The Inca, as the empire's chief executive, also ruled with a similarly organized council.

In the early sixteenth century, in an attempt to extend royal control over the new colonies, the Spanish introduced a colonial organization composed of viceroys, captains general, and **corregidores** (later replaced by **gobernadores-intendentes**). Judicial authority rested on the "audiencias", acting as supreme appellate bodies in key colonial capitals. While the audiencias were primarily judicial bodies their importance rested also on their executive and legislative responsibilities.

The colonial form of government did not leave a basis for local governance after independence. Governmental positions were usually restricted to attorneys of Spanish birth. The exclusion of creoles prevented the development of a cadre of natives who could, after independence, assume the duties previously performed by Spaniards. This was complicated by a lack of attorneys

to assume these roles.

The requirement of formal legal training further restricted entry for creoles into the judiciary. Eventually, many of the audiencia positions were sold to private individuals. The sale of audiencia positions created a practice of considering judicial positions as booty. This was continued after independence with the practice of rewarding political debts with these positions.

Simón Bolívar, who was openly skeptical of the ability of Bolivians to govern collectively, wrote the nation's first constitution. Adopted by the Constituent Assembly on November 6, 1826, and promulgated on November 19, Bolívar's constitution has influenced all of the nation's subsequent constitutions. It provided for a popular representative (unitary) republic with sovereignty invested formally in the Bolivian people. It divided governmental powers into four branches: executive, legislative (consisting of three bodies), judicial, and electoral. The Constitution proclaimed judicial independence and established lifetime tenure for the President.

Early constitutions established certain precedents that henceforth proved pervasive in Bolivian political life. Until the mid-twentieth century, for example, the franchise remained restricted to the approximately 10 percent of the population that was literate in Spanish and either owned property or engaged in an art, a science, or some other remunerative position. In addition, successive governments concentrated power in the hands of the executive.

The second constitution, adopted on August 31, 1831 during the regime of General Andrés Santa Cruz Calahumana (1829-39), abolished most of the innovative features of the first, such as the tricameral legislature with proportional representation and the lifetime president. In line with other Latin American models, it established a bicameral legislature and a four-year presidential term, which could be renewed indefinitely through successive reelections.

Between the 1839 constitution, which provided for the organization of municipalities, and 1880, when the nation's first lasting charter was adopted, Bolivia was ruled under five constitutions. They varied little in either language or substance, however, with the exception of the powers granted to the president and the length of the presidential term, which was reduced again in 1878 to four years, with no consecutive reelection. Most provided for the traditionally strong executive. During this period, however, the first law regulating the activities of the Bolivian judicial process was adopted. This law provided the basic guidelines for Bolivia's administration of justice system for the next century.

While all of these constitutions maintained judicial independence as one of its basic tenets, in reality the judiciary was treated as another branch of the public administration. During the first years, for example, judicial personnel was designated and paid by the Executive.

Bolivia's tenth constitution, adopted in 1880, proved to be of historic importance because it remained in effect for fifty-eight years and influenced all subsequent constitutions until 1952. Although it basically perpetuated the status quo, it established the framework for the political party system. Several amendments also had a far-reaching impact.

The 1938 constitution, promulgated during the reformist administration of Colonel Germán Busch Becerra (1937-39), embodied radical changes. According to its provisions: human rights outweighed property rights, the national interest in the subsoil and its riches predominated over private interests, the state had a right to intervene in economic life and to regulate commerce, workers could organize and bargain collectively, and educational facilities for all children were

mandated. Guarantees for the right of workers to organize collectively, resulting in the formation of miners and peasants unions which played a central role in the 1952 Revolution.

Reforms of the 1938 constitution, implemented in 1945, gave women the right to vote in municipal elections and extended the presidential and vice presidential terms to six years, without immediate reelection. But a constitution promulgated in 1947 again reduced the presidential term to four years and increased the powers of the Senate. Although Presidents Victor Paz Estenssoro (1952-56, 1960-64) and Hernán Siles Zuazo (1956-1960) of the **Movimiento Nacionalista Revolucionario** (MNR) pledged to reform the constitution, the formal structure of government remained basically the same after the 1952 Revolution.

The 1952 Revolution sparked the transformation of Bolivia and initiated a process of state-led development that envisioned a harmonious pattern of capitalism and populist redistribution. State capitalism, however, proved to be more compatible with exclusionary, military-based rule than with the populist politics of the MNR. In fact, the inability of the MNR to control the demands for greater redistribution by organized labor, led by the Bolivian Labor Federation (Central Obrera Boliviana--COB), culminated in the MNR's overthrow in 1964.

In 1961 the Bolivian National Congress revised the constitution, recognizing the fundamental changes that the Revolution had brought about, namely abolition of the **patronato** of the Roman Catholic Church, agrarian reform, dissolution and reorganization of the army, classification of the workers' and peasants' militias as regular parts of the national army, nationalization of the tin mines, participation of workers in the management of national enterprises, and universal adult suffrage. The 1961 constitution also included a provision for the reelection of a former president, but only for a second term. Paz succeeded in pressuring Congress to amend the constitution in 1964 to allow for a second consecutive term in the presidency. This measure, along with a series of other events, led to the overthrow of Paz Estenssoro and the MNR in 1964 by a military coup.

Three years after Paz's overthrow in 1964, yet another constitution was promulgated. Under the 1967 Constitution, Bolivia continues to have a presidential form of government, with a bicameral legislature. A succession of de facto military rulers ensured, however, that democratic elections were not held and that the Constitution was not enforced. It was not until the 1982 transition from military rule to a democratic system that the 1967 Constitution was fully reinstated.

Conflict between labor and the state deepened under military rule. With the exception of the Juan José Torres period (1970-71), military governments repressed organized labor to implement state capitalist development. As a result, over the next two decades class conflict was exacerbated. State capitalism had been incapable of improving the living standards of the majority of Bolivians, and the economy was still heavily dependent on a single export commodity. Under the government of General Hugo Bánzer Suárez (1971-78), the health of the economy rested on excessive foreign borrowing.

The MNR Revolution attempted to institutionalize a political model that could both incorporate the masses mobilized by them and provide access to state jobs for the middle class. Although it attempted to emulate Mexico's Institutional Revolutionary Party (Partido Revolucionario Institucional--PRI), the MNR failed to subordinate labor, military, and peasant groups to the party structure. Instead the party was held hostage to the interests of factional leaders who eventually conspired with the military to overthrow Paz and the MNR. Like the MNR, the military also failed to institutionalize an alternative political model.



Of great significance, however, were the reforms to the judicial system implemented by the de facto government of General Hugo Bánzer Suárez (1971-78). Bánzer's government enacted by decree the Law on Court Organization (1972), the Criminal Code (1972), the Family Code (1972), Civil Code (1975), the Commercial Code (1977), and the Code of Criminal Procedure (1972). These laws, known as the Bánzer codes, were the most far-reaching reforms of the legal system in the twentieth century. Despite the return to democracy in 1982, the Bánzer Codes have not been repealed or ratified by the Bolivian legislature.

The failure of the revolution and the subsequent military regimes to their accomplish political and economic objectives led to the deepening of cleavages that sparked the revolution in the first place. By the late 1970s, Bolivia was a country torn apart by regional, ethnic, class, economic, and political divisions. This was the context in which the transition to democracy was to take place.

The succession of elections and coups that followed the military's withdrawal from politics in 1978 revealed the deterioration of Bolivian institutional life (see Table 1). In the absence of military leadership for the process of transition, parties, factions, and other groups searched for a formula to carry them to the presidency. Nearly seventy political parties registered for the general elections in 1978, including at least thirty MNR factions.

In this context, it became evident that elections would not solve the structural problems facing Bolivia. In 1979, 1980, and 1985 the winning party could only muster a plurality of votes during the elections. As a result, the legislature became the focal point of political activity as parties and tiny factions maneuvered to influence the final outcome of the general elections. For example, in 1980 Congress elected as president Hernán Siles Zuazo, who had won a plurality of votes. Simultaneously, factions of the military linked to narcotics and other illicit activities were unwilling to surrender control of the state to civilian politicians who threatened to investigate charges of human rights violations and corruption during the Bánzer years.

TABLE 1

Bolivian Rulers During the Transition to Democracy: 1971-1981

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August 1971 to July 1978	General Hugo Bánzer Suárez
July-November 1978	General Juan Pereda Asbún
November 1978-August 1979	General David Padilla A.
August- November 1979	Walter Guevara Arze
November 1-16, 1979	Colonel Alberto Natusch B.
November 1979-July 17, 1980	Lydia Gueiler Tejada
July 1980-August 1981	General Luis García Meza

August 1981-July 1982	General Celso Torrelio V.
July 1982-October 1982	General Guido Vildoso C.
October 1982-August 1985	Hernán Siles Zuazo
August 1985-August 1989	Víctor Paz Estenssoro
August 1989-present	Jaime Paz Zamora

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The July 17, 1980 coup by General Luís García Meza represented a two-year interruption of the transition to democracy. García's military regime was one of the most corrupt in Bolivian history. García and his collaborators maintained close links with cocaine traffickers and neofascist terrorists. Faced with international isolation and repudiation from nearly every political and social group, García and the generals that succeeded him ruled with brute force. By 1982 disputes among rival officers and pressure from abroad, political parties, the private sector, and labor eventually led to the convocation of the Congress elected in the 1980 elections.

On October 10, 1982, Siles of the Democratic and Popular Unity (Unidad Democrática y Popular--UDP) coalition was again elected president by Congress. Having been denied the presidency in three consecutive elections, Siles's ascension to power was an auspicious occasion.

Siles enjoyed overwhelming popular support and appeared to have a mandate to implement populist reforms. The military and its civilian allies were completely discredited and no longer constituted a threat or an alternative to rule Bolivia.

By 1982, however, Bolivia faced the most severe economic and political crisis of the last three decades. The economy was beset by chronic balance-of-payments and fiscal deficits. Siles thus faced the dilemma of trying to democratize the country in the context of economic scarcity and crisis. The UDP promised to enact a more equitable development program that would address labor's demands for higher wages and other benefits. As the crisis deepened, however, labor became increasingly disaffected.

The economic plight exacerbated tensions between populist and antipopulist wings of the MNR and other political parties that had been latent since the revolution. Because the UDP controlled only the executive, political conflict was heightened. Congress remained firmly in control of a de facto alliance between Paz's MNR (the faction that retained the party's name) and Bánzer's Nationalist Democratic Action (Acción Democrática y Nacionalista--ADN).

Conflict between branches of government had been manifest since the beginning of the transition process. Legislators formed complex coalitional blocs to choose executives, whom they promptly turned on and sought to subvert. Congressionally sanctioned coups, labelled "constitutional coups," were only one example of the prevailing political instability.

Under Siles, the full complexity of the crisis emerged. From the outset, the government was weakened by a serious confrontation between the legislature and the executive over alternative solutions to the economic predicament. Responsibility for resolving the crisis rested with the

executive, whereas Congress exercised its oversight powers. Additionally, the presence of minuscule parties in Congress exacerbated the confrontation between the UDP and the parties in the legislature.

As a result of the government's inability to deal with Congress, Siles relied on executive decrees. Congress, in turn, charged the president with unconstitutional behavior and threatened to impeach or overthrow him in a constitutional coup. During the three years of his presidency, Siles was unable to put down the congressional threat, directed by opposition parties but bolstered by groups from his own UDP.

Rather than reconfirming the Supreme Court which had been fired by García Meza, the new government chose to select a totally new Court. This decision, taken by the opposition controlled Congress, which named political adherents to these posts, led to protests from within the Judiciary. The judicial worker's union, for example opposed the selection of the Superior Court judges claiming that they had cooperated with the military government.

Between 1982 and 1985, the CEPB and COB engaged in a zero-sum game to force the government to enact policies favorable to their interests. Siles would decree a stabilization program designed to satisfy the IMF and the United States internationally and the CEPB domestically. The COB would respond with strikes and demonstrations, often backed by peasants and regional civic associations. Lacking congressional support, the government would modify the program to the point of annulling its effectiveness through wage increases and subsidies, thereby provoking the wrath of the CEPB and IMF.

By 1984 the government was completely immobilized and incapable of defining effective economic policies. The result was the transformation of a severe economic crisis into a catastrophe of historic proportions. During the first half of 1985, inflation reached an annual rate of over 24,000 percent. In addition, Bolivia's debt-servicing payments reached 70 percent of export earnings. In December 1984, lacking any authority to govern because of the conflict with Congress, labor, the private sector, and regional groups, the Siles government reached the point of collapse. As the crisis intensified, the opposition forced Siles to give up power through a new round of elections held in July 1985.

Bolivia's transition to democracy inaugurated a new era for the administration of justice. For the first time since the 1960s judges and other members of the judicature were to be selected through constitutional procedures. The reality of party politics, however, dictated that the political party or coalition in power filled court vacancies on the basis of patronage or party links rather than merit. As a result, the judiciary has become an important part of the spoils system claimed by whatever party emerged victorious from Congress.

The 1985 elections reflected the complex nature of the Bolivian political process. Bánzer, who had stepped down in disgrace in 1978, won a slight plurality with 28.5 percent; followed closely by Paz. An indication of the left's loss of popular support was the MNRI's showing of only 5 percent.

In Congress the MNR moved quickly to form a coalition that would enable Paz Estenssoro to gain the presidency. After luring the MIR with promises of state patronage, a coalition was formed, and Paz was elected president of Bolivia for the fourth time since 1952. Although enraged by the outcome of the congressional vote, Bánzer and the ADN made the calculated decision to accept it. In so doing, the former dictator protected his long-term political interests.

## Democracy and Economic Stabilization

In 1985 the entire nation was submerged in a state of tense anticipation as Paz unveiled his strategy to confront the economic and political crisis. The private sector came to play a crucial role in the elaboration and implementation of the government's economic policy as it shifted its traditional support for authoritarian military solutions and by 1985 had become clearly identified with free-market models that called for a reduction of the state's role in the economy. When the economic reforms were announced, the impact on the private sector became evident.

On August 29, 1985, Paz signed Decree 21060 (NPE), one of the most draconian economic stabilization packages ever implemented in Latin America. Specifically, the decree aimed at ending Bolivia's record-setting hyperinflation and dismantling the large and inefficient state enterprises that had been created by the revolution.

After addressing the economic side, Paz moved to resolve the political dimensions of the crisis. Shortly after the announcement of Decree 21060, the COB, as it had done so often under Siles, headed a movement to resist the NPE. But the COB had been weakened by its struggles with Siles. After allowing the COB to attempt a general strike, the government declared a state of siege and quickly suffocated the protest. Juan Lechín Oquendo and 174 other leaders were dispatched to a temporary exile in the Bolivian jungle. They were allowed to return within weeks. By then, the government had already delivered the COB a punishing blow that all but neutralized organized labor.

Even as he moved to contain the COB, Paz sought to overcome the potential impasse between the executive and legislature that had plagued Siles for three years. The MNR did not have a majority in Congress, and therefore Paz had to contemplate a probable confrontation with the legislature. By adopting the NPE, Paz had seized on parts of the program pushed by Bánzer and the ADN during the electoral campaign. As a result, Bánzer was left with the choice of backing Paz or opposing a stronger version of his own policy program.

Discussions opened by Paz with Bánzer ripened into a formal political agreement, the Pact for Democracy (**pacto**), signed on October 16, 1985. The formulation of the pact was a crucial political development. Under its terms, Bánzer and the ADN agreed to support the NPE, a new tax law, the budget, and repression of labor. In return the ADN received control of a number of municipal governments and state corporations from which patronage could be used to consolidate its organizational base. The MNR also agreed to support reforms to the electoral law aimed at eliminating the leftist groups that voted against Bánzer in Congress. Most important, the **pacto** allowed ADN to position itself strategically for the 1989 elections.

Appointments to the Supreme Court were not a part of the negotiations to form the **pacto**. In 1986, however, the **pacto** ratified the nomination of MNR militants to the Supreme Court. Bánzer's ADN believed that it would be rewarded by its MNR ally with an endorsement during the 1989 elections if it supported the appointees. As the 1989 elections approached, however, the realities of electoral politics proved costly to the ADN as the MNR reneged on their agreement.

In the most immediate sense, the **pacto** was effective because for the first time in years, the executive was able to control both houses of Congress. Paz used this to sanction the state of siege and defeat all attempts of the left to oppose the NPE. In broader historical terms, the **pacto** was significant because it created a mechanism to overcome the structural impasse between the executive and the legislature.

The campaign for the 1989 elections tested the **pacto** to the breaking point. At issue was the need to ensure that in the event neither candidate secured a majority, the losing party would support the victor in Congress. Polls conducted in December 1988 and January 1989 suggested that Bánzer could emerge victorious. Under the terms of an addendum to the **pacto** signed in May 1988, the MNR would be obligated to support Bánzer in Congress. This situation provoked a sense of despair in the MNR that perceived itself as an extension of ADN with no real likelihood of emerging victorious in May 1989.

In February 1989, the **pacto** ended abruptly, a victim of its inherent weaknesses. Indeed, the elections held on May 7, 1989 presaged this alliance-making by the political parties. Bánzer's ADN joined forces with the Christian Democrats by nominating Luís Ossio as Bánzer's running mate. The MNR's presidential candidate, Gonzalo Sánchez de Lozada, ran on the same ticket as former president Walter Guevara Arze. The MIR's presidential candidate, Jaime Paz Zamora, made an alliance with the 9th of April Revolutionary Vanguard (Vanguardia Revolucionaria 9 de Abril--VR-9 de Abril), led by Carlos Serrate Reich. Although the elections were generally considered to be well-run and fair, none of the three leading presidential candidates--Bánzer, Lozada, and Paz Zamora--won the required majority vote. Therefore, the newly elected Congress became responsible for choosing among the three leading candidates when it convened in August. In a bizarre turn of events, Bánzer, the dictator of the seventies, threw his party's support in congress to Jaime Paz Zamora.

### **The government of the Acuerdo Patriótico (Patriotic Accord)**

On August 6, 1989 Victor Paz Estenssoro became the first president to complete a full term in office since 1964. As he departed he proclaimed "mission accomplished" a manifestation that he had succeeded in rewriting his place in history. In four years he had managed to bring Bolivia back from the brink of chaos and, by peacefully handing power over to the opposition, he had insured the continuity of Bolivia's democratic system.

However, consolidation of the achievements of the Paz Estenssoro government was dependent on the alliance of two erstwhile enemies, ADN and MIR, who had joined forces in the heat of the political battle to claim the presidency.

The naming of the cabinet partially revealed some of the arrangements worked out between ADN and MIR. Apart from obtaining the vicepresidency for Luis Ossio, Bánzer's running mate, ADN secured 10 key policymaking posts. ADN controlled the ministries of defense, finance, planning, foreign affairs; the MIR secured interior, health and education, and labor.

The MIR's willingness to pact with ADN was especially noteworthy considering several of its members, including Jaime Paz Zamora, served prison time during the so-called Bánzerato (1971-78).

The new ruling alliance revealed, however, that old ways of doing politics had survived. The distribution of political patronage between the two parties continued apace throughout the first months of the new government. In fact a true spoils system became evident as job seekers formed long cues in front of ADN and MIR headquarters. Fearing dismissal and other reprisals, MNR bureaucrats flocked to join ADN and MIR party lists.

On August 24, 1989 Paz Zamora and Bánzer established the **Consejo Político del Acuerdo**

**Patriótico** (Political Council of the Patriotic Accord-COPAP). Established to serve as a link between the cabinet and the two political parties that made up the Acuerdo Patriótico it was lauded as the instrument necessary for the consolidation of democracy and the modernization of the Bolivian state. Opposition parties accused the government of establishing a "super state" that would exercise authority beyond constitutional limitations. Still others argued that the council divided the governing domestic and foreign policy responsibilities between the ADN and MIR respectively. In other words, General Bánzer and ADN would be charged with running Bolivia while Jaime Paz Zamora would concentrate on "forming part of the Latin American political jet set."

In spite of all the controversy at the beginning COPAP became an important but not significant institution. Above all it served to coordinate relations between ADN and MIR. Because it is essentially a political instrument, however, it was quite ineffective in providing guidance to the cabinet in economic policy. Moreover, because of recurrent charges that Bánzer was overshadowing president Paz Zamora, the old general moved out of La Paz to his native Santa Cruz and showed up only on special occasions. By the end of 1989 members of COPAP argued privately that beyond purely political roles, it was completely ineffective.

Declining support for the government is rooted partially in its unconstitutional behavior in several areas. The most egregious offense came in December 1989. Colonel Luis Arce Gómez, the Minister of Interior of the drug tainted regime of General Luis García Meza, was apprehended and sent to the United States to stand trial on charges of conspiracy to traffic in cocaine despite the absence of an extradition treaty with between Bolivia and the United States. When President Paz Zamora declared that the action had been taken because the Bolivian judicial system was corrupt and would be incapable of prosecuting Arce Gómez a serious conflict arose between the executive and judicial branches which lasted throughout 1990. Relations between the judiciary and the executive worsened when in October 1990 the Bolivian government utilized the same method to spirit Erlan Echevarría, a well-known drug trafficker, to Miami to testify against his former boss, Colonel Arce Gómez.

This reality has proven to be quite collective especially when elections produce a turnover in the Executive branch. Supreme Court justices appointed to ten-year terms with links to opposition parties have become a key obstacle to the executive's policies.

In late 1990 a dispute over the constitutionality of a tax law sparked a major conflict between the legislative branch controlled by the ruling ADN-MIR coalition and the Supreme Court. While the legislature threatened to impeach eight members of the Supreme Court, the judiciary (controlled by militants of the opposition MNR party) threatened President Jaime Paz Zamora with a malfeasance trial. This dispute, has evolved into the gravest constitutional crisis facing Bolivia since the transition to democracy in the early 1980s. Eight justices of the Supreme Court are facing hearings in the National Congress. Like other previous institutional conflicts in Bolivia, it is likely that the ruling **Acuerdo Patriótico** will find a political solution to the impasse. It is also highly likely, however, that the solution will also be unconstitutional.

Similar authoritarian traits were used by the Paz Zamora government to carry out economic reform, such as the dubious ratification of investment, mining, and hydrocarbons codes over the opposition of the MNR and the remaining opposition parties in Congress. The government's incapacity to negotiate economic policy matters with the MNR, which after all designed the current policies, has translated into the worst constitutional crisis since 1984. By challenging the constitutionality of current policies in the Supreme Court, the MNR extended the scope of conflict and engulfed every major political institution. The **Acuerdo Patriótico's** decision to impeach eight

Supreme Court members who ruled in favor of the MNR has only given credence to accusations that the government wants to pack the courts to do away with any possible source of opposition to its initiatives.

President Paz Zamora's overwhelming concern with highly visible foreign affairs --in 1990 alone he travelled abroad 9 times including a visit to the White House-- has insulated him from most of this domestic turmoil. In the meantime, General Bánzer, who initially displayed very little involvement in governmental affairs, has come to dominate the internal political scene. In one particularly revealing instance, Bánzer bypassed Paz Zamora, who was touring Japan, by ordering the initiation of the impeachment trial of members of the Supreme Court.

Meanwhile both inter and intra party politics (along with U.S. anti-drug policy) has come to dominate governmental energies and the national media attention has had a significant impact on Bolivia's foreign image. Relations between the MIR and ADN have been confined mainly to issues of turf setting and neither party has projected any kind of programmatically focused plan of government.

Declining support for the government has reinforced demands from the MNR and the rest of the opposition for constitutional and electoral law reform. Nearly two years after the inauguration of Paz Zamora, the MNR has cast a shadow on the legitimacy of the MIR-ADN government by demanding that the Supreme Court annul the outcome of the 1989 elections. Recent surveys demonstrate declining public confidence in political parties and governmental institutions. For example, on a confidence scale of 1 to 7 respondents gave parties 3.31 and Congress 3.24, the lowest approval rating of all institutions. These results confirm a most interesting paradox: while the majority believes that political institutions are essential to democracy most Bolivians distrust them.

## The Justice System: Participating Institutions

Bolivia follows a traditional tripartite model of government with three autonomous branches of government (Executive, Legislative and Judicial). Like most other Latin American models, this constitutional equality is not realized in practice and the government is characterized by a strong Executive, an active resurgent Legislative and a weak Judicial Branch. Of these, the most important institutions, relative to the justice sector, are the Congress, the Attorney General, the police and the Judiciary. Additionally, the private bar and public defense are also critical actors in the system

### The Executive

Executive power resides in the president of the republic and his ministers of state. The president and vice president are chosen through direct elections to a four-year term. To win an election, a candidate must secure a majority of the popular vote. If a majority is not achieved, the National Congress selects the next president from among the top three candidates. This reliance on Congress rather than on a second round of elections has contributed greatly to the instability of democratically elected executives. Because of a recurring executive-legislative split, elections produced governments that possessed only formal power. Until 1985 real power, or the effective capacity to rule, had eluded democratically elected presidents.

The power of appointment enables the president to exercise control over the large number of public servants at all levels of government. The president unilaterally appoints the ministers of state, members of the bureaucracy, and prefects (*prefectos*) of departments (*departamentos*). From lists submitted by the Senate, the president appoints the comptroller general, the attorney general, the national superintendent of banks, and the heads of state enterprises. As captain general of the armed forces, the president has the power to appoint the commander in chief of the armed forces and the commanders of the navy, army, air force, and public safety.

The cabinet ministers conduct the day-to-day business of public administration. In 1990 the Council of Ministers included eighteen ministries. Of these, the following have a significant role in matters related to the administration of a justice:

Ministry of Interior, Migration, and Justice which is charged with preserving domestic order, supervising the administration of justice, operates the correctional system, administers immigration policy, directs the nation's intelligence service, directs the police, and more recently has managed the UMOPAR troops and all drug enforcement efforts. (Consult National Police section.)

Labor and Labor Development which supervises and regulates labor-management relations.

Ministry of Campesino Affairs which is charged with insuring compliance with the Agrarian Reform regulations and with supervising relations between campesino workers and landholders.

Ministry of Finance, which has the task of designing the national budget in consultation with other ministries. Although the Judicial Branch claims economic autonomy, in reality the actions of this ministry affect the functioning of the Bolivian court system.



The executive branch also includes a number of decentralized institutions and autonomous enterprises, such as the Social Security Institute (Colegio Nacional de Seguridad Social--CNSS), the Mining Corporation of Bolivia (Corporación Minera de Bolivia--Comibol), the Bolivian State Petroleum Enterprise (Yacimientos Petrolíferos Fiscales de Bolivia--YPFB), the National Railroad Company (Empresa Nacional de Ferrocarriles--Enfe), Lloyd Bolivian Airline (Lloyd Aéreo Boliviano--LAB) and the National Telecommunications Enterprise (Empresa Nacional de Telecomunicaciones--Entel).

### **The Bolivian National Congress**

Historically, the bicameral Congress, composed of Chamber of Deputies and a Senate, has been subordinated to the executive. The irony of the system is that although the Constitution calls for a passive policy-making role, the National Congress has become a major actor in national politics. Indeed, the Congress elected every civilian ruler to take office from the late 1970s to 1989.

Congress has the right to pass, abrogate, interpret, and modify all laws. A bill must be passed by the legislature and must be signed by the president to become a law. Although the president may veto a bill, Congress may override the veto with a two-thirds majority vote.

Congress has twenty-two prerogatives, which can be divided broadly into its economic policy, foreign policy, and political powers. Congress's principal economic policy function is its approval of the annual budget that must be submitted to Congress by the executive prior to the thirtieth session. This constitutional requirement has rarely been respected, however. In 1987, 1988, and 1989, Congress approved the budget for the first time in history, although not within the first thirty sessions. Because budgets often faced opposition in Congress, governments usually approved them through executive decree. Congress also has the power to establish the monetary system and is responsible, in theory, for approving all economic policy. Development programs, for example, must be submitted to Congress, and any loans contracted by the government must also be approved by the legislature.

Congress's foreign policy prerogatives primarily concerned its power to approve all treaties, accords, and international agreements. Although this practice was not always respected in the late 1980s, the Congress must also decide whether to allow foreign troops to travel through or operate in Bolivian territory, a subject of growing importance given multilateral efforts to curb coca production.

The Congress's specific powers relating to the administration of justice include the naming of Supreme Court justices and members of the National Electoral Court, as well as the right to create new provinces, cantons, and municipal districts. One of its most important prerogatives is to declare amnesty for political crimes. Its most significant power, however, is to resolve elections in which the winning candidate has not garnered a majority of the vote.

The Congress possesses wide-ranging oversight powers over executive behavior. A single senator or deputy may call ministers and other members of the executive to testify through a procedure known as *petición de informe oral* (request for an oral report). If the report is unsatisfactory, the senator or deputy may convert a simple request into an interpellation, which may be resolved only through a vote of confidence or a vote for censure. In Bolivian parliamentary tradition, a censured minister must resign and be replaced by the executive. A *petición de informe escrito* (request for a

written report) may also be sent to the executive regarding specific policies, events, and actions. The Senate or Chamber of Deputies may also call attention to problems and current issues through **minutas de comunicación** (minutes of communication).

The Congress also has the power to initiate impeachment proceedings. For a **juicio de responsabilidades** (malfeasance trial) before the Supreme Court, a two-thirds majority vote is required to indict individuals accused of wrongdoing while in office. In 1986 the Congress indicted former dictator General Luís García Meza (1980-81); in early 1991 he was being tried by the Supreme Court.

In addition to shared powers, each chamber has specific responsibilities. The Chamber of Deputies elects the Supreme Court justices from a list submitted by the Senate, approves the executive's requests for the declaration of a state of siege, and transmits to the president of the republic a list of names from which the latter must select the heads of social and economic institutions in which the state participates. The Senate hears accusations against members of the Supreme Court raised by the Chamber of Deputies; submits to the president a list of candidates for comptroller general, attorney general, and superintendent of the national banking system; approves ambassadors; and approves military promotions annually.

Elected deputies and senators enjoy immunity from prosecution for the duration of their term; however, a two-thirds majority may retract this privilege from a specific legislator. In 1969, for example, owing to pressure from President René Barrientos Ortuño (1964-69), Congress lifted the immunity from two deputies who had initiated a "responsibilities trial" against the President. This clearly confirmed the primacy of presidential power.

Deputies are elected through universal suffrage based on a complex proportional representation system. A 1986 electoral law, used for the first time in 1989, calls for the election of 130 deputies. Bolivia has adopted the Spanish tradition of electing **suplentes**, or alternates, as well. Hence, every elected deputy has an alternate in the event of his or her death, resignation, or disability. Based on population density in 1980, the Chamber's 130 seats were divided as follows among Bolivia's 9 departments: La Paz, 28; Potosí, 19; Chuquisaca, 13; Santa Cruz, 17; Cochabamba, 18; Oruro, 10; Tarija, 9; Beni, 9; and Pando, 7.

Deputies are elected for four-year terms, with the entire membership facing election every fourth year. Every legislative year the Chamber of Deputies elects a new leadership. The Chamber's leadership consists of a president, two vice presidents, and five secretaries. The day-to-day operations of the chamber are the responsibility of an **oficial mayor**, or high official. Since 1982 the leadership has reflected the chamber's party composition, although the political parties with the greatest number of seats control the top three positions.

Every new legislative year also carries with it the reordering of committee memberships. In 1989 the Chamber of Deputies had seventeen committees that reflected broadly the structure of the executive cabinet. Since 1982 the committees, which have five members each, also have reflected (with some exceptions) the political subdivisions of the chamber as a whole. Usually, committee chairs are reserved for members of the party in control of the chamber, but may be used as bargaining tools. Because committee memberships are reorganized each year, seniority is not a factor. Owing to the large number of political parties represented in the lower chamber, the process of approving bills in committee and in the house as a whole is a protracted exercise.

The vice president of the nation is president of the Senate, as well as president of the National

Congress. The Senate is composed of twenty-seven senators, three per department. The winning party in each department secures two senators and the runner-up controls the third. This arrangement ensures minority representation in the upper house. Like the deputies, senators are elected to four-year terms. As in the lower chamber, **suplentes** are also elected.

In August, at the beginning of a new legislative year, the Senate elects a president, two vice presidents, and four secretaries. Because fewer parties are represented in this chamber, electing its leadership is usually a rapid and smooth process.

Like the Chamber of Deputies, the Senate has seventeen committees, and every legislative year a complete membership turnover takes place. Each committee must have five members drawn from every party represented in the chamber. In general, bills spend less time in committee in the Senate (and they are also approved more rapidly by the whole chamber) than in the Chamber of Deputies. This is largely because fewer political parties are represented in the Senate.

Committees in both the Chamber of Deputies and the Senate are not specialized bodies, and attempts were not made to secure competent legislative support staff until the late 1980s. Advisors to the committees were selected more on the basis of political affiliation than expertise. Committees were also plagued by a lack of an adequate library and reference service. The Senate library, which theoretically serves the Congress, was woefully inadequate. Although every session was recorded on tape, an efficient congressional record service did not exist. The transcripts of the 1982-85 sessions, for example, did not become available until the late 1980s.

A recurring problem, in both chambers, was the prevalence of obsolete rules of procedure dating back to the 1904-05 legislative year. Procedural rules have slowed the approval of bills and have contributed in large measure to making Congress's legislative function obsolete.

During congressional recesses, the Constitution provides for a congressional commission (**comisión de congreso**) to be elected by the members of each chamber. Nine senators and eighteen deputies, including the president of each chamber and the vice president of the republic, are elected to this commission.

The congressional commission ensures that the Constitution and civil rights are respected while the Congress is not in session. It is also provided with the same executive oversight capacity as Congress. Through a two-thirds majority vote, the commission may convoke an extraordinary session of Congress. Moreover, in the case of a national emergency, it may authorize the President, by a two-thirds vote, to issue decrees that carry the full force of law. Finally, the commission may design bills to be submitted to Congress during the regular legislative year.

The Congress has not been active in enacting laws or reforming critical pieces of legislation such as the Bánzer codes, for example. It has devoted much of its time to its oversight functions including interpellations of cabinet ministers. Critics maintain that because of the abuse of these oversight functions, Congress has surrendered its policymaking prerogatives to the Executive.

### **The Attorney General (Fiscalía General de la República)**

According to the Constitution (article 129) and the Law on Court Organization, the Public Ministry is the State's representative in criminal and civil matters in which the State is a party.

Criminal prosecution, family matters, and cases involving minors comprise the largest proportion of their workload.

As in other civil law countries, the Public Ministry is an abstract concept encompassing a broad scope of governmental responsibilities related to the interests of the protection of the State, legality and the right of citizens. This responsibility may be deposited in a single governmental organization or in several institutions. The Public Ministry functions in Bolivia rest in the Attorney General (Fiscalía General de la República). It is unusual that committees of the Congress also have the right to exercise a prosecutorial role.

There is some intent in the Law on Court Organization to make the fiscales judicial officers and, in fact, in the same law there is reference to the Public Ministry as part of the Judiciary. This, however, does not reflect the real situation of the Ministry which depends totally on the Executive Branch.

This dependence on the Executive is partially a result of the lack of a law on organization for the Public Ministry which leaves the Attorney General without an independent organizational structure.

The Attorney General (Fiscal General) is legally the head of the Public Ministry. He/she is named by the President for a ten year term from a list of three nominees proposed by the Senate. This factor links the Attorney General to the Executive but it is in the selection of the fiscales (mostly prosecutors) that the linkage is clearest. The appointments of fiscales are supposed to be made by the Ministry of the Interior from lists proposed by the Attorney General. The reality, however, is that these fiscales are often named directly by the Ministry without prior consultation with the Attorney General. This and other factors demonstrate that the Attorney General's role is largely nominal since he/she does not truly command the institution, a role reserved for the Subsecretary of Justice in the Ministry of the Interior.

The following factors indicate a lack of effective supervisory authority on the part of the Attorney General. He/she does not have the power to issue directives setting forth a uniform criminal policy of the State. Additionally, the Attorney General does not have the power to discipline his/her subordinates since the law does not specify forms of misconduct or set forth a process for sanctions of fiscales. In practice, the Subsecretary of Justice in the Ministry of the Interior exercises disciplinary authority over the fiscales through an informal and non-regulated process. There are no rules which allow the Attorney General or other supervisors to intervene in the legal process to insure that their desires are followed or to maintain unity in the criminal policy of the State. This intervention, which is normally carried out elsewhere by replacing or removing a prosecutor from a case, are absent in Bolivia.

The role of the Public Ministry in society makes it important that it issue periodic reports to keep the State and the public informed on such issues as criminality and proposals for changes leading to greater efficiency in the administration of justice. Bolivian law does not contemplate this function and even if it did, the Attorney General is hampered by the absence of reports forwarded by his/her subordinates. The Subsecretary of Justice of the Ministry of Justice and Attorney General have taken some initial measures to remedy this deficiency but the most important step to be taken is to implement a periodical evaluation mechanism and the issuance of regular reports of activities.

The primary function of the fiscales is to represent the State's interest in the criminal process, family matters and issues involving minors.

The categories of fiscales in descending hierarchical order are as follows: district fiscales (departmental), partido fiscales and instructional fiscales. Some departments have established specialized fiscalías. For example, in La Paz, there are 10 partido fiscales and 7 instructional fiscales serving in specialized courts. Specialization is fundamental to greater institutional efficiency since having to jump from case to case and court to court is not conducive to a professional fiscalía.

Another of the issues which affects the professionalization of the fiscales is the broad scope of functions which are legally assigned to them. For example, the fiscal is charged with insuring that the public defenders attend criminal proceedings daily. It appears odd to have the prosecutor act as the controller of the opposing party's conduct.

The total number of fiscales is approximately 92 for the entire country. This compares with 424 judges giving a ratio of almost five judges per prosecutor. If one considers that the majority of courts are unipersonal, one assumes that each fiscal must cover proceedings in approximately five courts daily.

The lack of fiscales is most serious at the provincial level in which none are assigned. Their function is carried out by a "promotor fiscal" who is often not a lawyer and receives no remuneration for his service. This is detrimental to the achievement of the objectives of the Public Ministry since its interests are represented by an unpaid and often lay corps of officials named by the courts.

The code of criminal procedure does not adequately set forth the role which the fiscal is to play in the criminal process. The adoption of new measures under the narcotics law has further confused the situation since it assigns roles to the Judiciary which normally correspond to the fiscal.

Bolivian law also provides no norms which establish that the prosecutor's role is also to assure that legality is followed and that he/she act as an impartial party. This would lead a fiscal, for example, to intervene on behalf of an accused if convinced of his innocence.

The lack of a sufficient number of fiscales to attend to the prosecutorial role has already been mentioned above. This is complicated by rotational systems in some departments. In Santa Cruz, for example, the fiscales are rotated every two months, insuring a lack of continuity in the processes.

The salary and benefits of fiscales are woefully inadequate. Even though they must meet the same qualifications for selection as judges, the salary differences are as much as 50% in some cases. This discriminatory salary policy may lead some fiscales into the illegal practice of law or even worse contribute to the possibility of corruption. Potential salary differentials between narcotics fiscales and the rest may aggravate the low morale among the lower paid officials.

With low pay, no training and considerable political influence in their selection, fiscales are generally held in low esteem.

Another factor affecting the professionalization of the fiscales are the deplorable working conditions in which they labor. They usually must share space in overcrowded court buildings since they don't have their own facilities. This is apparently being corrected by the construction of new facilities with funds from UNFDAC (United Nations Fund for Drug Abuse Control).

Finally, there is no institutionalized process for the selection or promotion of fiscales. Critics

charge that an open advertised competition for vacancies is inconvenient since this opens the process to political influence, favoring an informal system as an assurance of greater freedom from political factors.

The absence of a law defining the organization of the Public Ministry, the lack of a clear definition of the powers of the Attorney General and the fiscales, excessive workloads and poor compensation are all factors which determine the role which the fiscal plays as a passive actor in the criminal process.

## **The National Police**

With the establishment in 1937 of the Cuerpo Nacional de Carabineros (National Corps of Carabineers) the police became institutionalized at the national level. The carabineros were the product of a merger between the Military Police, the paramilitary security police and the army's carabineer regiment. Until the 1952 Revolution the national police has been subordinate to the armed forces and the Ministry of Defense. The critical role played by the carabineros in support of the MNR revolutionaries not only determined the outcome of the conflict but paved the road for the establishment of a national and autonomous police force. Complete autonomy, however, did not come until the late 1960s and then only during the populist government of General Juan José Torres who was the first to name a commander from the ranks of the police rather than from the armed forces.

During the Bánzer dictatorship the national police played a crucial role in controlling dissident groups. Under the direction of the Minister of the Interior, police intelligence units were responsible for collecting information on the underground resistance to the right-wing government. In 1976 General Bánzer introduced the most significant reforms to the structure of the national police since the 1952 revolution as the Police and National Guard were consolidated into the Security Guard (Guardia de Seguridad) which eventually became the National Police. The current structure of the national police dates from this period.

During the transition to civilian rule in the early 1980s the police played an important role in maintaining public order as numerous groups demanded prompt redress of grievances from the incipient democratic government. Between 1982 and 1985, the weak government of Hernán Siles Zuazo relied on the police to break up labor and peasant strikes.

From the perspective of the United States the most critical function of the Bolivian police has been in the area of anti-narcotics. Beginning in 1983 the national police has led the fight against the cultivation of coca leaf and the production and trafficking of coca paste and cocaine. In anti-drug operations, for the first time in Bolivian history the navy and air force have performed subordinate tasks to specialized units of the national police. As U.S. policy dictates the involvement of the military in these efforts this situation is likely to be reversed in the near future.

With the increase in violence in the early 1990s, including the kidnapping and murder of a prominent Bolivian entrepreneur and attacks on U.S. citizens, the national police has been hard pressed to display its readiness in combatting the spread of terrorism. Although little evidence is available to support government claims, the spread of guerrilla violence from conflict-torn Peru has become a critical area of concern.

According to the Bolivian Constitution the principal mission of the national police is to preserve internal public order and to guarantee the enforcement of laws. Because the Constitution calls for a centralized police force the police is responsible to the national government rather than to local civilian authorities. The president of Bolivia serves as the commander-in-chief of the police forces and has the prerogative of naming the Director General of the National Police Corps (Cuerpo Nacional de Policía Nacional) through the Minister of Interior, Migration, and Justice. As commander-in-chief, the President has the power to direct police activities during a national emergency. In the event of an international conflict the Constitution requires the police force to be subordinated to the commander-in-chief of the armed forces and the Minister of Defense. In such a situation, the police units are treated as reserve units activated for combat.

The police corps is comprised of the following units: the General Administration Section; the National Guard; Directorate of National Investigations (Dirección de Investigaciones Nacionales, DIN); Customs Police (Policía de Aduana); Traffic Police (Policía de Tránsito); National Highway Service (Servicio Nacional de Carreteras); Fire Corps (Cuerpo de Bomberos), manned by police personnel; and the National Police Academy (Academia Nacional de Policía). During the government of Lydia Gueiler in 1980, a Police General Command and a staff (Estado Mayor), consisting of twelve sections, were established.

The Ministry of the Interior directs the operations of a number of anti-riot, antinarcotics, and anti-terrorist units. The **Grupo Especial de Seguridad** (Special Security Group, GES) is a specialized motorcycle unit designed primarily to protect public institutions, including the Legislative Palace, the presidential palace and the various ministries. In the late 1980s the 450-member GES began receiving counter-terrorist training from French police advisers. As a result, the Brigada de Intervención Polivalente, BIP) was formed to respond exclusively to hostage taking incidents. The BIP is a special 22-member anti-terrorist command intended to respond to cases of hostage taking, kidnapping, and outbreaks of subversion. Bolivian officers are now also receiving anti-terrorist training under the auspices of the U.S State Department's Anti-terrorist Assistance Program.

With the growing impact of the war on drugs on US-Bolivian relations the national police has become the principal institution involved in every operational phase of the anti-drug effort. In 1983 during the government of Hernán Siles Zuazo, the U.S-funded **Unidad Móvil de Patrullaje Rural** (Mobile Police Unit for Patrolling Rural Areas), also known as the Leopards, was established as the principal anti-narcotics police unit. In 1987, the UMOPAR became subordinated to the **Fuerzas Especiales de Lucha Contra el Narcotráfico** (Special Anti-Narcotics Forces -FELN).

As pressure from the United States mounted to step up anti-drug efforts, in 1990 the FELN developed its own intelligence service. Along with increases in its size and the scope of its functions the FELN has come to dwarf all other sectors of the Bolivian National Police. As a result, conflict has intensified with other units which have been bypassed for promotions as the FELN takes the largest share of the police budget.

The FELN has carried the main burden of fighting the drug war in the Beni, Chapare and Yungas regions of Bolivia where most of the coca production takes place. Significantly, the efforts of this police unit have been supported by the Navy, which patrols rivers in the Beni region, and the Air Force, which provides mainly transportation and logistical support. After "Blast Furnace," the controversial July-November 1986 joint U.S.-Bolivian operation, pressure intensified to force the national police to take a back seat to the military. This translated mainly into a controversy about

the role and mission of the Bolivian police. Involvement in the drug war has technically "militarized" the police, a situation which has made the armed forces uncomfortable. In fact, UMOPAR troops have received extensive military-type training from the Drug Enforcement Administration (DEA), the U.S. Border Patrol, and the Special Forces.

Until early 1991, the United States was satisfied with the performance of the FELN, especially the leadership provided by Colonel Lucio Añez, a man considered incorruptible. However, in late February 1991 the U.S. announced the suspension of all aid to Bolivia when Colonel Añez was replaced by Colonel Faustino Rico Toro, a retired officer who had served as head of the Army's intelligence during the drug-tainted government of General Luis García Meza. A few days later, Rico Toro was forced to resign. Additionally, before aid was restored, the U.S. sought the firing of the Minister of the Interior and the Commander of the police who were accused of providing protection to traffickers.

The anti-drug efforts of UMOPAR troops have been criticized by the United States which has insisted that these national police units are not capable of carrying out the drug war on their own. No evidence exists, however, that the FELN has not performed an adequate job in controlling the production of both coca leaf and coca paste. As with any organization involved in fighting the drug industry, a certain amount of corruption has occurred and will continue to dampen the overall performance of this institution.

In 1990 the United States successfully pressed upon the Bolivian government to order the armed forces into the drug war. Under the terms of Annex III to a February 1987 bilateral agreement the U.S. has agreed to provide additional aid to the military only if the armed forces enter into the anti-drug efforts. This insistence on "militarizing" the coca growing regions has sparked a great deal of unrest among peasant groups who feel threatened by the shift in the Bolivian government's policy. Under the terms of U.S.-Bolivian bilateral agreements the military will replace the national police in drug interdiction operations throughout Bolivia.

## **The Judiciary**

Legally, the Bolivian judiciary is an autonomous and independent institution with far-reaching powers. Under the terms of the 1967 Constitution, the judiciary is also autonomous in economic matters. The judicial branch is responsible for administering its own resources, establishing wage and salary scales, and determining the allocation of its budget. However, the executive branch in conjunction with the legislature determine the size of the judicial branch's share of the national budget.

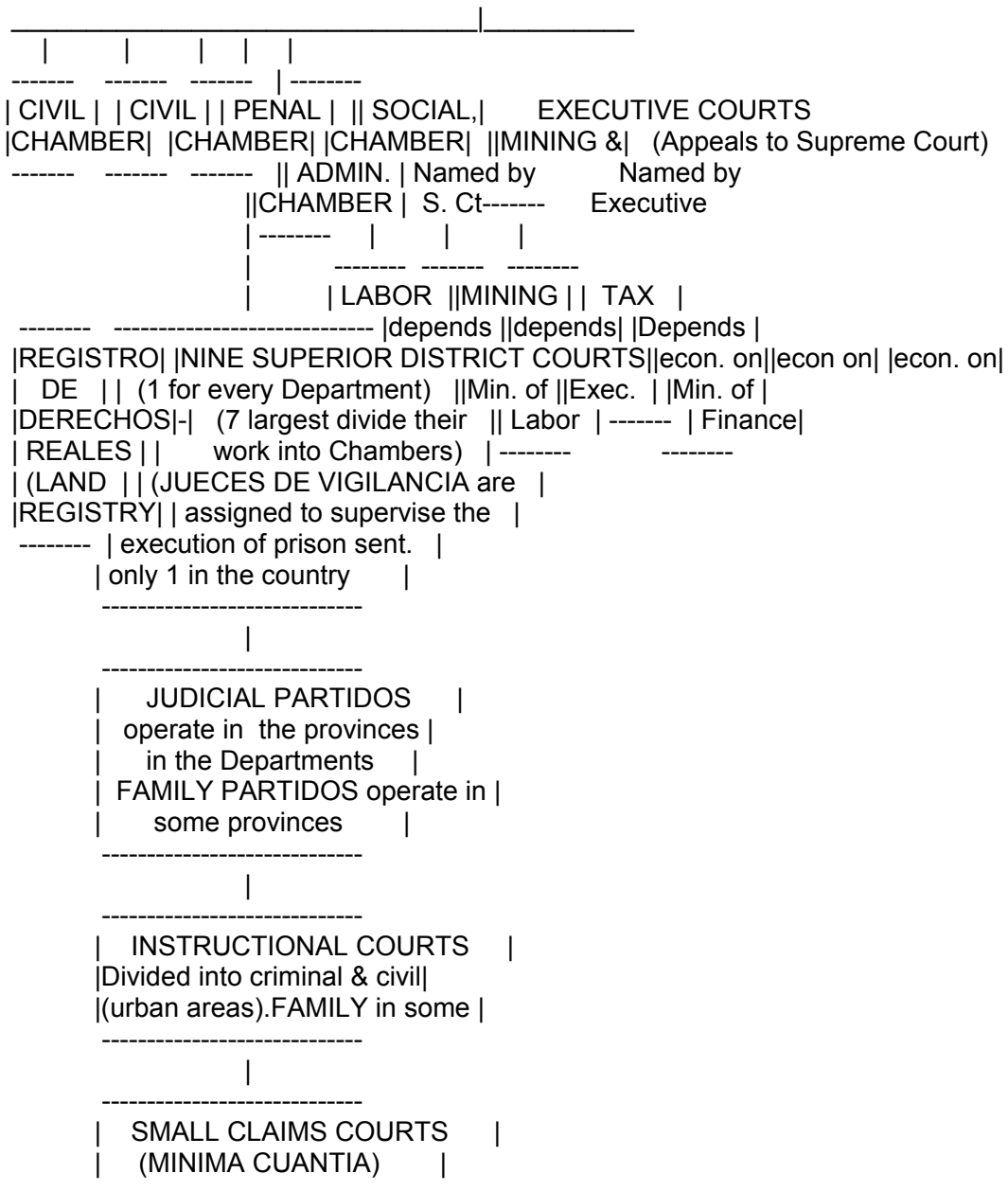
According to article 115 of the 1967 constitution the judicial function rests in the Supreme Court, District Courts, Partido Courts, Instructional Courts, Small Claims Courts (Juzgados de Mínima Cuantía), Sentence Supervisory Courts (Juzgados de Vigilancia), and Family Courts (Juzgados de Familia). Special legislation has recently established special drug courts. It is noteworthy, however, that the function and organization of the Bolivian judicial system is regulated by the so-called Bánzer Codes decreed during the early 1970s. The organizational chart presented as Chart No. 1 represents the jurisdictional organization of the Bolivian Judicial Sector.



Chart No. 1

Jurisdictional Organization of the Bolivian Judicial Sector

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SUPREME COURT



Bolivia divides into nine judicial districts that correspond to the country's nine departments. Each district is accountable to a superior district court located in the capital city of every department. Judicial districts divide into Partido Courts that serve the provinces of each department. Partido Courts, in turn, divide into judicial seats to serve each municipality in every province.

As the seat of District Courts, the capital of each department must have as many Partido Courts, Instructional Courts, Small Claims Courts, and Family Courts as deemed necessary by the Supreme Court to meet the needs of each department capital. Every provincial capital, in turn, seats an ordinary Partido Court (juzgado de partido ordinario) and a Family Court. Municipal sectional capitals seat Ordinary Instructional Courts and a Family Court.

### **The Supreme Court**

The Supreme court, composed of twelve ministers and sitting in Sucre, is the highest appellate court in Bolivia. Supreme Court ministers, who occupy cabinet level rank, elect a president to run the affairs of the court.

Ministers of the Supreme Court must be Bolivian by birth, older than forty years, citizens in good standing and must have practiced law for twelve years. The Chamber of Deputies elects the Supreme Court Ministers, for ten-year terms, from a list submitted by the Senate.

Due to historical traditions and political factors, the election of the members is an informal political process whereby each Department is allotted a number of justices in proportion to its size, with La Paz, Cochabamba, Santa Cruz and Chuquisaca being entitled to more than one justice. There is a further apportionment on the basis of the governing political parties.

The Supreme Court consists of four chambers (Salas), each composed of three ministers: civil, penal, social, and a mining and administrative chamber. The number of judges assigned to each chamber varies with the smallest being the Penal with two justices assigned to it. Cases are resolved by the member of the chamber assigned to review the case after a random assignment. The ruling is ratified by the remaining members of the chamber.

In addition to its role as the highest appellate tribunal in Bolivia, the Supreme Court also has the following responsibilities: a) supervise the administration of the Judicial Sector; b) propose a set of candidates to the Senate, for the selection of the judges (vocales) of the nine Superior District courts as well as the judges on the National Labor and Mining Courts; c) name the judges of the Tax Court from a slate proposed by the Ministry of Finance; d) name all judges below the district level from the slates proposed by the District Courts; e) remove by two-thirds vote any of the aforementioned judges so long as there is a criminal charge against them; f) act as trial court in the impeachment of the President and ministers who have been accused by the Congress.

### **Superior District Courts**

Each of the nine departments is assigned a Superior District Court with the number of judges (vocales) varying in proportion to population growth and density: the La Paz District Court is comprised of twelve vocales; Cochabamba and Santa Cruz have six; Potosí, Oruro, and Tarija have five; and Beni and Pando have three. There are 64 district court judges nationally.

These courts act as intermediate appellate courts, hearing all appeals from rulings of the

Provincial Trial Courts (Juzgados de Partido). They also supervise an administrative apparatus and administer the budget assigned by the Supreme Court.

These judges are named by the Senate to serve six-year terms from a slate of candidates presented by the Supreme Court. The practice is that the Supreme Court justices named from the District in which the vacancy occurred nominate the candidates and that the remainder of the Court respects the choice as a form of "judicial courtesy".

The seat of the Superior District Courts is the capital of the department and their jurisdiction extends to the entire department. These courts divide into civil and criminal chambers. The La Paz District Court is comprised of three chambers, two civil and one criminal. Each chamber consists of three judges. The Cochabamba and Santa Cruz Courts divide into civil and criminal chambers, each with three judges. Superior District Courts in Chuquisaca, Potosí, Oruro, and Tarija also divide into two chambers; however, the civil chamber consists of three judges while the criminal is staffed by only two. In contrast, the Beni and Pando Superior District Courts are housed in one chamber with three judges.

The plenum of each Superior District Courts submits a list of names to the Supreme Court for the selection of partido, instructional, family, and vigilance judges, as well as notary publics and (registradores de derechos reales). Most local public officials are sworn in before Superior District Courts.

Habeas Corpus appeals are heard by the body of the whole of these courts.

### **Provincial Trial Courts (Juzgados de Partido)**

A Partido court is assigned to each province in the Department. There are 133 such judges in the country. They act as primary trial courts for all serious crimes and civil disputes.

A typical partido court has a judge, a secretary, up to three auxiliary personnel and a summons server (notificador). The secretary and the auxiliary personnel, in urban areas, are law students who serve a period of one to two years in lieu of a requirement that they serve as instructional judges for one year in rural areas upon graduation. This creates a constant turn-over of administrative staff in these courts. In rural areas, where there are no law students, these auxiliary positions are filled by career staff.

These judges are named by the Supreme Court based on a slate of candidates proposed by the District Court. The same courtesy system referred to previously is followed by the Supreme Court.

These courts divide into civil and criminal chambers in departmental capitals while being unicameral in the provinces. Civil jurisdiction extends primarily to property disputes, including cases dealing with mining and hydrocarbon contracts. Given the importance of these industries to the Bolivian economy these are potentially significant courts.

Criminal partido courts are the primary trial courts for serious criminal cases, hear appeals from rulings of instructional courts as well as review ***habeas corpus*** petitions.

### **Drug Courts**

With the passage of antinarcotics legislation in 1988, sixteen new anti-narcotics specialized courts were established (juzgados de partido de sustancias controladas).

Because of its current significance, an in-depth discussion of the Drug Courts is warranted. Of particular concern in the 1980s was the increasing influence exercised by the cocaine industry over judges, prosecutors, and even Supreme Court justices. Because of their low salaries, justice officials were susceptible to the offers of large amounts of money by narcotics traffickers. Apart from corruption, however, the principal problem was a total lack of infrastructure to deal with what essentially constitutes a new crime. Owing to pressure from the United States, the Bolivian government has embarked on a controversial strategy to strengthen the capacity of the system to prosecute narcotics cases.

In July 1989 the Bolivian Congress passed Law 1008 which established a far reaching set of guidelines for drug interdiction and crop substitution programs. The new law also established special courts to prosecute drug traffickers.

The Drug Courts hear cases submitted to them by the Anti-Narcotics Special Forces. As a branch of the National Council Against Illegal Use and Drug Trafficking, the Anti-Narcotics Special Force is charged with presenting the case before the special courts. Prosecutors direct the activities of the Anti-Narcotics Special Forces in all matters related to the indictment of drug traffickers and prosecute cases before the special courts. Apart from trying drug traffickers the Drug Courts are empowered to investigate the fortunes of persons suspected of involvement in drug trafficking and/or money laundering.

While being one of the principal advocates for the creation of these special courts, the United States has raised serious reservations about their effectiveness. Chief amongst its concerns was that because of low salaries and benefits judges and prosecutors were still subject to corruptive pressures from the narcotics industry. Owing to the December 1989 U.S.-Bolivia agreement the training of prosecutors and judges as well as their salaries has been subsidized by the U.S. government. Some have charged that the U.S. holds veto power over the selection of these officials. This raises serious questions about parallel courts that appear to be accountable more to Washington than to the Bolivian government.

Technical evaluations of drug court success have not been positive. Reviews of caseloads, for example, demonstrate that the bulk of cases have been brought against minor figures. Oftentimes growers or couriers. These investigations have not resulted in major seizures of assets of traffickers nor have informants been turned as a result of the threat of prosecution. Finally, there are serious questions about the physical security of judges and prosecutors who become too aggressive in the war against drugs.

The establishment of these courts has generated widespread debate in Bolivia. The first major controversy is constitutional since special courts are specifically prohibited by the Constitution. However, the Bolivian National Congress avoided amending the Constitution by labelling these as "specialized" courts.

A second controversy deals with the funding of new judges and prosecutors. Because they would require the hiring of 48 additional judges and the funding of 16 new courts the Supreme Court has been unable to meet the costs of operation. Given the context of economic austerity prevalent in Bolivia the executive branch was also hesitant to fund these new courts. As a result, under the terms of a December 1989 agreement the United States government has agreed to fund the salaries, training, and operation of the new judges, prosecutors, and courts respectively. The possibility has been raised that U.S. funded specialized courts undermine the legitimacy and

effectiveness of the rest of the Bolivian administration of justice system.

### **Instructional Courts (Juzgados de Instrucción)**

Unipersonal instructional courts are assigned to municipalities in the provinces though not every municipality has one. There are 171 nationally. In urban areas they are subdivided into civil and criminal instructional courts. In serious crimes, criminal instructional judges review the evidence, direct the investigation, determine pretrial release and incarceration and make a determination as to probable cause for trial. They act as trial judges in minor crimes. Civil instructional judges hear cases in which the quantity is intermediate between that of the small claims courts and the partido courts, determine landlord-tenant disputes and hear appeals from small claims courts. Instructional courts in rural areas are not specialized and may hear both criminal and civil cases.

These judges are also named by the Supreme Court to four-year terms based on a slate of candidates proposed by the District Court. The same courtesy system referred to previously is followed by the Supreme Court.

### **Small Claims Courts (Juzgados de Mínima Cuantía)**

Juzgados de mínima cuantía or small claims courts are staffed by a judge and a witness (testigo de actuaciones). These are the lowest level courts and are limited in jurisdiction to small civil disputes and are distributed in accordance with decisions of Superior District Courts. Moreover, these courts are not funded by the Judiciary and depend exclusively on fees charged to litigants. Unlike other judges, to become a small claims judge an individual does not have to be a lawyer but must be a Bolivian by birth, a citizen in good standing, and demonstrate some forensic knowledge. Although preference is given to lawyers often law students serve in these courts. Small claims judges serve two-year terms.

### **Family Courts (Juzgados de Familia)**

According to the Law on Court Organization the Supreme Court must establish as many family courts as necessary in every judicial courts throughout the country. Family Courts divide into partido courts and family instructional courts. Both courts exercise jurisdiction in all family matters brought before them. These courts, however, are regulated by the Family Code (Código de Familia). To become a judge an individual must meet the requirements necessary to serve as an ordinary partido judge as well as others established by the Family Code.

### **Vigilance Courts (Juzgados de Vigilancia)**

Vigilance courts are established to insure the proper execution and compliance with sentences dictated in criminal cases. Every judicial district in the country must have a vigilance court seated in the district capital. Judges, who are named by the Supreme Court from a slate submitted by the District Courts, serve four-year terms. To become a judge in a vigilance court a person must meet the requirements need to serve as a *vocal* in a superior court.

### **Number and distribution of the courts**

The number and locations of courts available to to the public and their location determine, in part, the access which citizens will have to the justice sector and ultimately affect public

confidence in it.

Table 2 presents the distribution and number of courts, as well as property registries, in Bolivia.

There are a total of 424 judges providing service to a population of 6,798,000 or one judge for every 16,000 inhabitants. The majority of the judges are located in urban areas: 68% of the partido judges and 49% of the instructional judges. The courts have complained of the scarcity of judges given the population growth. While comparisons of population are one means to determine court needs they do not necessarily determine demand since a much smaller population may be more litigious than a larger one.

The most accurate means to determine location of additional courts is to analyze cases filed in previous years and project future growth and special circumstances that might affect caseloads. While the figures are not available for all of the Departments, 1987 figures are available for the three largest. La Paz had 10,659 new cases for a rate of 111 new cases per judge. Cochabamba had 15,840 new filings for a rate of 240 new cases per judge. Santa Cruz had 6,536 new filings for a rate of 126 new cases per judge.

While these figures do not appear as overwhelming as the courts have argued, they have used these and population figures to justify requests to the Congress for the creation of new courts.

TABLE No. 2

NUMBER AND LOCATION OF JUDGES IN BOLIVIA BY TYPE OF COURT

Department	Courts & Services Other than Supreme Court						Courts/Total
	Sup. Dist.	Capital Part.	Courts/Inst.	Rural Part.	Inst.		
Chuquisaca	5	8	7	4	11	35	
La Paz	16	36	31	10	19	112	
Cochabamba	9	18	16	11	21	75	
Santa Cruz	9	18	16	5	13	61	
Oruro	7	7	7	3	9	33	
Potosi	5	9	8	11	18	51	
Tarija	5	8	8	4	5	30	
Beni	3	4	4	3	7	21	

Pando	3	1	1	-	1	6
Total	62	109	98	51	104	424

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Source: Payroll of the Supreme Court, June 17, 1988 and demographic data from the Instituto Nacional de Estadísticas for 1987.

Note: This table does not include the 12 justices of the Supreme Court.

### **Court Administration**

A well managed court system will have a strong national and local administrative offices which are overseen at each level by judges, but which have significant authority to administer the court system under policies established by the court.

In Bolivia, the administrative systems are more decentralized than generally in Latin America. There is a small administrative staff supervised by a committee of Supreme Court magistrates (Consejo Administrativo). However, the strongest administrative apparatus is found at the departmental level. Each of the nine districts has a treasurer, directing an "Oficina Financiera", who performs many of the functions of a court administrator. Additionally, the provisions of the Law on Court Organization award to district court judges a great deal of power in the selection of judges in their departments. While they must consult with the Court on the selection of judges, support personnel are all named directly by them with little consultation with the Supreme Court.

Budgeting and financial management is also decentralized. The district court submit a budget request to the Supreme Court. Although this request is modified by the Court committee, the district court manages that budget and makes its subsequent assignments to the courts in the district. Purchasing is also made at the district level.

### **Personnel**

The greatest asset of any institution is its personnel. This is especially so in the judiciary wherein the quality of the judges and support personnel determine the fairness of the system and the respect which the public will have towards it. This section will deal with three personnel areas: stability, training and compensation.

One of the main guarantees for an independent and professional judiciary is the establishment of a civil service system for all levels of judicial personnel which establishes norms and procedures for their selection, promotion, remuneration and removal. This is still incipient in Bolivia.

Most Latin American systems have been historically characterized by political interference in the selection and tenure of judges. Currently however, the concept of civil-service type rules governing judicial personnel is the most serious issue being discussed by Latin American legal scholars. Bolivian judges have been historically selected from the ranks of the private bar, to which they return after only a brief stay in the judiciary. Selection of judges is commonly based on factors other than merit (ie. friendship, influence or politics). Likewise, their tenure is been dependent on shifts in these factors. Thus, it is not uncharacteristic to find that this country had seventeen Supreme Courts since 1950 and that there is a proceeding currently to oust the current one.

"This functional irrationality translates itself into a permanent crisis arising from: the chronic instability of the judiciary, in the notorious improvisation of judges, as well as the deficient intellectual levels which have existed in the administration of justice, except for notable exceptions."

The need for a personnel system has been a topic of discussion throughout recent Bolivian legal history. The first law in 1938 allowed the Supreme Court to establish a merit selection and tenure system while a similar law in 1947 set forth the guidelines for the establishment of an office to administer such a system (referred to in Bolivian legislation as the *escalafon*). Neither of these attempts survived immediate political crisis.

The Law on Judicial Organization established an office to administer a merit selection system and ordered that "no person can be nominated in a slate of candidate to magistrate, judge or auxiliary personnel without prior registration in the '*escalafon*'..." (Article 211). Likewise, the Constitution in Article 117 establishes that a judicial merit system shall be created. The Supreme Court in 1979 issued regulations for the creation of a merit system. These precepts, however, have largely been ignored.

Pursuant to the existing law and regulation, the Court has established an office to receive applications and evaluate the qualifications of applicants and current personnel but has hesitated to enforce compliance. Thus, something as simple as obtaining the *vitae* of all judicial personnel has been impeded by the refusal of the major District Courts to cooperate.

In addition to the foregoing, the Bolivian system is characterized by a lack of position definitions and classifications (other than the brief description which is contained in the law on the organization of the courts); lack of adequate criteria for selection, promotion and reward (there are some initial steps in this direction); absence of adequate procedures to insure the above; absence of salary scales and benefits based on a rigorous study of positions and functions. The retirement system, recently installed, for example, does not provide a living wage even at the level of Supreme Court justices.

The number of personnel in the Judiciary is approximate. In addition to the judges, the judiciary employs a total of 1,306 lay or support personnel.

A critical factor in attracting and retaining qualified judicial personnel is the remuneration which they receive. Bolivian judges and lawyers have complained about the low salaries which are paid to them.

The current pay structure is based on a uniform salary scale which does not recognize merit or location of service. It does include a special increment recognizing the amount of years worked. This salary uniformity is especially discriminatory for persons working in urban areas in which the cost of living is much higher than in rural areas.

While the court system maintains this uniformity, there is a wide gap between employees that receive their salary from the Judiciary and those that while legally part of the Judicial sector, receive their salary from the Executive. Thus, the President of the National Mining Court receives almost half of what an instructional judge receives. This is one of the major reasons for a recent drive, among Executive judges, to have themselves included in the Judicial budget.



The sufficiency of judicial compensation policies is properly determined in comparison to other public sector entities. Making this comparison, judicial salaries are on a par with or higher than the rest of the public sector. However, judges criticize this comparison, claiming there is no other State institution with as high a percentage of professionals among its employees as the Judicial Sector. This assertion is difficult to prove. Nevertheless, a number of judicial employees are paid below the subsistence level for a Bolivian family of five.

Another factor which affects judicial salaries is the excess of lawyers in the Bolivian economy, making these jobs attractive to a mass of unemployed professionals.

While selection of the most qualified applicants for judicial positions is fundamental in developing the institutional capacity of an institution to provide services, an efficient and structured training program, both for incoming and existing personnel, is a fundamental complement to a modern personnel system. Bolivia has no on-going training program for its personnel.

### **Budgets**

Funding for the Judiciary in 1989 was approximately 21 million bolivianos from a request of 50 million bolivianos. This leaves them at the same level of funding as 1988. In addition to the funding provided by the Congress, the Supreme Court estimates that it generates approximately 24% of its total income from fees and other charges to users.

A major issue of the court system is the comparatively low level allocated to the judiciary compared to other sectors of government. The courts estimate that 0.87% of the national budget is allocated to them and that a more appropriate level of funding would be through a constitutionally mandated assignment of a fixed percentage of the national budget.

Even though the courts fail to include their own income in the percentage allocation, which would bring it closer to 1%, the amount of support for the court system is low. The result of the continuing low allocations has been to increase court costs, passing on to the citizen the cost of operating the court system. For example, the Court has added a 20 boliviano surcharge for property registrations (Derechos Reales) in order to finance computerization of the system. There has been negative reaction to this system of user fees, especially from litigants who have complained that this process further hampers access to the courts.

The allotment from the Congress funds salaries and benefits only. Court fees and fines are the only source of revenue to support operating expenses and infrastructure. This has caused a number of problems. For example, the Congress dictated that the Judiciary establish 16 new courts for narcotics cases in 1989 (at an approximate cost of 3 million bolivianos) but provided no funding for them.

The courts in the major departments have complained that they are not being treated fairly in the distribution of the collections which they generate. For example, La Paz, Cochabamba and Santa Cruz accounted for 77% of court income in 1986 yet revenue figures were not taken into account when making the distribution to districts. This disparity in court collections show a disturbing lack of correlation between district population, size and revenue collected.

### **Legal Defense**

The importance of an adequate defense to the development of a fair and efficient justice

system cannot be underestimated. Any criminal proceeding requires the presence of an attorney, either private or public, for an expeditious and equitable resolution.

In Bolivia there are a total of 4,801 lawyers, in accordance with the registration books in each of the departmental bar associations. Their departmental distribution is as follows: Chuquisaca (235), Cochabamba (764), Oruro (196), Tarija (278), La Paz (2,086), Santa Cruz (1,028), Beni (67), Pando (20) and Potosi (127).

Any legal system owes a great deal to the legal education which is imparted in the law schools. There are a total of ten state universities in this country, 7 of which have law schools. The oldest is the Universidad San Francisco Javier de Sucre and the largest one is the Universidad Mayor de San Andrés in La Paz. There is a general perception that the quality of law school training has declined due to the closing of universities during military regimes and the growing politization of universities during the democratization period.

The right to a legal defense is established in the Bolivian Constitution which guarantees to a defendant the right to counsel at the first questioning by a judicial officer. The Superior District Courts annually name a number of judges as court appointed counsel (defensores de reos y pobres) who are assigned to represent indigent criminal defendants. This is somewhat illusory since there are only eleven such defenders named in all of the country. The right to an adequate defense for indigents is also affected by the low salaries which are paid to court appointed counsel. The lack of an adequate defense also affects adversely the process since this is a major cause for delays in the process. Some alternative systems of defense exist through the Bar Associations, the law schools and other private institutions.

## **Criminal Procedure**

The Criminal Procedure Code governs the process which takes place from the moment a crime is detected or reported to the authorities until it is brought to completion with the final adjudication and sentence. Critical actors in this process include: the police, the prosecutors, defense counsel, the courts and the correctional system. Because it emphasizes a "mixed" process (partly written partly oral), Bolivia's procedural code is modern. It has moved away from strictly written proceedings, which determined the fate of the parties during the investigatory state and the trial became a mere review of the written record accumulated in the absence of an adversarial process.

The criminal process is divided into two distinct stages. During the investigative or instructional stage the judge investigates the crime and determines whether there is probable cause to try the defendant. The trial stage is aimed to determine the guilt or innocence of the accused and their imposition of a sentence upon conviction. Only in narcotics cases is a different procedure, in which there is only one stage, employed. In situations where the penalty does not exceed two years or which require private prosecution the case is tried directly by an instructional judge.

### **The Instructional Stage**

In contrast to other Latin American nations where the commission of a crime opens a

criminal proceeding and directly involves the judiciary in the investigation of a crime, Bolivia's Judiciary does not become involved until a defendant has been apprehended. A crime must be reported to the prosecutor (Public Ministry, the police, or the court). The police may apprehend a suspect *in delicto flagrante* and proceed without a complaint having ever been filed.

Following the commission of a crime the police is usually the first actor to become involved. The Code of Criminal Procedure and the Law of Judicial Organization call for the Judicial Police to investigate serious crimes (as noted above); in reality, all investigations are carried out by the National Police under direct orders from the executive branch. Most proposals for reforming the Bolivian Judiciary concur on the need to establish a working judicial police. Disagreement exists, however, concerning its location and sources of funding.

All preliminary investigation of a crime is conducted by the police without the direct supervision of the court or the prosecutor. Within forty-eight hours after an arrest has been made, the court and prosecutor must be notified. From the moment of arrest, the accused enjoys the right to counsel. A public defender is assigned to those individuals who cannot afford a lawyer. The case is then formally filed before the Superior District Court which immediately, and randomly, assigns the case to an instructional judge.

An instructional judge must determine the release status of the accused and determine the crimes which must be investigated within forty eight hours following receipt of a case. For several reasons, mainly an overburdened system, this is seldom achieved. In every case, except those in which the penalty does not exceed four years or in special cases in which the law prohibits pretrial release such as narcotics, pretrial release may be ordered. Monetary bail is the sole basis of pretrial release, however. As a result, a substantial proportion (70 percent) of persons under detention are awaiting trial. Overcrowded prisons are also a grave problem. The *Panóptico*, La Paz's principal prison, for example, has a capacity for 300 to 400 inmates yet over 1200 are currently held. Moreover, no separation is made between sentenced inmates and those awaiting trial.

Under Bolivian law, within the first twenty-four hours after a case is assigned to an instructional judge, a statement must be taken from the accused. Counsel must immediately be provided to a defendant who cannot afford counsel. Two methods are employed for assignment of counsel. In rural areas, the court assigns counsel from a member of the community who serves *ad honorem*. In urban areas, the District Court appoints counsel from a list of lawyers assigned to this task. However, their number is insufficient to meet the caseload demands. For example, in La Paz with a population of over one million inhabitants, six are available to serve as counsel for indigents. It is noteworthy that these lawyers also maintain private practices and must juggle their own cases with those assigned by the court. Lack of an adequate public defense system is one of the main weaknesses of the administration of justice and a primary cause for procedural delays.

While instructional judges are charged with carrying out the investigation of a crimes, in reality they must rely solely on police investigations to complete an investigation. In contrast to other nations where the instruction is secret, the parties have the right to be present during all such proceedings and to request additional investigation.

The technical quality of police investigations leave much to be desired while corruption can predetermine many of their outcomes. Often the Judiciary is blamed for dismissing cases when the fault lies with careless or negligent work by the police or prosecutors who prepared a weak case. For

obvious reasons this complaint is heard most often in narcotics cases. However, the judiciary is not totally without fault since instructional judges have the power to order further investigations after determining the initial one to be insufficient and seldom do so. Whether this is the result of corruption or a lack of concern their inaction compounds the problems of inadequate pretrial investigations.

Owing to the unassertive role determined in the Code of Criminal Procedure and the lack of resources the prosecutor plays primarily a passive role during the instructional stage of the process. A more active or adversarial prosecutor could serve to check judicial or police abuse and speed up the entire process.

Twenty days after initial charges are issued by the court, the instructional stage must be completed; however, this seldom occurs (a conservative estimate would be an average of six months per case with some lasting several years). Delays are caused by a variety of factors including the following: dilatory actions by the defendant; absence of the prosecutor or defense counsel; absence of police and other witnesses from the proceedings (this is often the result of a case being transferred to another region in Bolivia); and, absence of the judge due to a leave or illness (Bolivia's system does not allow for the naming of temporary judges to fill vacancies produced by the absence of a sitting judge).

Upon completion of this stage, based on the evidence available, the prosecutor must present a request to the judge, to either elevate the case for trial or dismiss all charges. The judge then hears both parties and issues an order to dismiss the case (either temporarily or with prejudice) or orders the case to proceed to trial.

### **Trial or plenary stage**

In Bolivia the trial stage is oral and public throughout. This is a major innovation which the Bolivian system shares with adversarial systems in common law countries. If a case is ordered to stand trial, the file must be forwarded to the Superior District Court where a trial (partido) judge is assigned randomly.

Upon receipt of the case, the court hears the statement of the accused and either party may question him/her. Then, parties must furnish a list of witnesses and experts and the court must set a date for trial.

Bolivia's multiethnic population presents serious procedural problems to the Judiciary. By law, all judicial proceedings must be conducted in Spanish; however, a great proportion of the population speaks Aymara, Quechua, or several other languages and dialects. In such instances, either the instructional judge or the partido judge may assign an interpreter. Because the Judiciary cannot pay interpreters, the court usually assigns one of employees of the court or even someone from the audience. Especially in cases where the judge or counsel do not speak the language of the non-spanish speaker, the potential exists for a great deal of abuse.

Another evidenciary problem faced in both stages is that all proceedings must be recorded verbatim. Few if any of the courts, however, are furnished with recording devices. If a recording device is available it is usually provided by one of the parties. Most often the court dictates the questions and answers or the debate to a secretary who transcribes in on site. The statement is then read back to the declarant, who certifies its accuracy. For those whose native language is not Spanish, abuse can also occur at this stage.

The trial is very similar to those in a common law systems with only one major exception: no jury is provided for under Bolivian law. Questioning of the witnesses is initiated by the judge, followed by the prosecutor and the defense counsel. At the conclusion of the trial, the parties present their conclusions and motions to the court. Then, the court must issue a sentence which involves two possible outcomes. First, the court must determine the guilt or innocence of the accused. Second, if an individual is convicted the court must impose a sentence. The standard of proof is less than proof beyond a reasonable doubt.

Several problems are evident with the trial stage in Bolivia's criminal procedure process. One of the most serious is the lack of a fixed period for the completion of the trial stage. As a result, trials often lag on for several years and the Superior Court can do little to speed-up the process. A second problem has to do mainly with procedure. Because it must reconsider all the elements of proof, the trial stage duplicates the steps taken at the instructional stage. As a result several proposals for reform suggest that the instructional stage be eliminated altogether. Proposals for doing away with the instructional stage, however, have been resisted. Noting the poor quality of police investigations, defenders of the instructional stage argue that it assures the successful completion of an investigation and prevents abuses from being committed by the police.

### **Appeals**

Appeals from a final sentence, as well as some interlocutory appeals, may be presented to the Superior District Court, which is divided into Chambers with a variable number of judges composing the Criminal Chamber (see description above). A case is randomly assigned to one of the judges whose decision is ratified or revoked by the remainder of the Chamber. A conviction or acquittal may be appealed by either party.

### **Problems Facing the Administration of Justice**

The problems facing the administration of justice in Bolivia cannot be isolated from those facing a government emerging from years of military rule and confronting a difficult transition to democracy.

The system of administration of justice is evaluated in this section. It is analyzed in terms of the regulatory provisions which govern the actions of same, and whether or not they are in line with the current realities of the country; the accessibility of the system; judicial independence; and fairness; efficiency in its application; and, accountability.

#### **A) Norms**

In a society governed by law, the operation of the system of administration of justice must be governed by laws and codes. The basic legal codes are in serious needs of reform and modernization. For example, the **Ley de Organización Judicial** and the **División Judicial de la República**, known as the Banzer Codes and enacted in 1972, were the most far reaching reforms of the judiciary in the twentieth century. Nevertheless, they contain a series of measures which have yet to be adopted. Other legislation dates back to the 19th century.

In many instances no legislation has been enacted even though the Constitution or other legislation calls for it. Both the law on Court Organization and the Code of Criminal Procedure call for the Judicial Police to investigate serious crimes yet there is no judicial police and cases are investigated by the national police. Likewise, the Constitution and the Law on Court organization establish the creation of a merit system for the selection and tenure of judges yet none has been

established. Finally, the Constitution calls for the enactment of a law regulating the role of the Attorney General yet none has been enacted.

While Bolivia's criminal procedure appears modern and is based on a mixture of adversarial and inquisitorial features, it is seriously deficient in the definition of the functions to be carried out by the parties to the process. For example, it details a weak role for the prosecutor yet expects him/her to act throughout the process both as the accuser and the guarantor of the defendant's rights. It assigns roles to nonexistent public defenders while establishing a system for the appointment of counsel which is illusory given the resources assigned to that task. Lack of an adequate public legal defense system is one of the primary weaknesses of Bolivian procedure.

In some instances, the procedural safeguards are illusory. For example, the Code of Criminal Procedure establishes terms by which decisions on pretrial confinement must be determined by judicial authorities yet restricts pretrial release to monetary bail. Thus, assuring that the bulk of pretrial detainees will be held incarcerated pending trial.

While the Code of Criminal Procedure establishes terms for completion of each stage of the criminal proceeding these are seldom complied with. For example, the investigative stage must be completed twenty days after initial charges are issued by the court. However, this seldom occurs and a conservative estimate is that an average of six months is realistic with some cases taking years. Finally, there are serious gaps in the legislation. For example, there is no fixed time period for the completion of the trial. Thus, trials often lag on for several years.

While there are deficiencies in existing legislation, norms are totally lacking in other instances. The most striking case is the absence of law defining the function and structure of the Attorney General's Office.

Additionally, Bolivia's archaic system of reporting legislation, not unusual in Latin America, makes it difficult to determine which law applies. All new legislation and decrees are published in a national publication of the Executive, the **Gaceta**. Jurisprudence is also similarly reported in the **Gaceta Judicial** published by the Judiciary. Both appear irregularly. It is then up to the attorneys to read the **Gaceta** and update their own copies of the relevant codes. Thus, often attorneys and judges may be relying on legislation which may have been repealed or interpreted differently than they assume.

Finally, narcotics legislation has complicated the normative problems faced by Bolivian justice by introducing foreign procedural aspects solely applicable to a limited number of cases. For example, while other courts operate on the basis of two procedural stages (investigation and trial), drug courts consolidate the process into one stage.

## **B) Accessibility:**

Accessibility refers to the possibility of any citizen to reach the judicial system to solve problems or conflicts which are legally predetermined as being within the competence of that sector.

This principle is conditioned on a series of factors: a) public knowledge of the law, b) costs, c) location and number of courts, d) schedules, e) caseloads and celerity, f) corruption.

### a) Knowledge of Rights and Institutions

One of the first conditions which must exist for the system to be truly accessible is that the citizenry be aware of the laws and of the institutions of the justice sector. In this regard, there is no information about public knowledge of their civil or criminal rights. However, one could assume that given the complexity of the legal system together with popular distrust in the justice sector popular knowledge of legal rights is unlikely.

Bolivia's multi-ethnic population presents unusual problems to the administration of justice since all laws and judicial proceedings are in Spanish and the majority of the population has another language as its mother tongue. Judges who serve in the provinces do not necessarily speak the local language. Additionally, litigants may be faced with the transfer of suits to the capital of the department. Thus, facing almost insurmountable barriers of distance and language. Illiteracy is a problem which complicates further denies equal access to the poor, whether Soansih speaking or not.

The scarcity of free legal services for lower income groups contributes to the lack of legal knowledge. For example, while the right to counsel is afforded to all citizens, court appointed counsel is only provided after pretrial investigation is completed and the defendant is denied the right to have the advise of lawyers during the most critical period of the proceedings.

Likewise, the facility and rapidity of legal processes will affect a user's resort to the system. As is discussed hereafter, the system is complex, overburdened and slow.

It is important for the justice system to pay particular attention to the problems presented by an uninformed population, confused as to their rights or the institutions that may redress their grievances and lacking adequate legal representation which must face a complex legal system with unclear laws and procedures. Under these conditions, the justice system becomes an inaccessible resource or option for the population and may lead some to seek alternative means of resolving disputes.

#### b) Confidence

Another factor which affects access is the confidence which the public has in it. Users will seldom accede to a system which they distrust.

Trust is partially a product of the perception about its impartiality, the equality with which it treats users and the stigmatization which is applied to parties.

All of the surveys indicate distrust among lawyers and citizens about the impartiality of the system. Adding a perception of a system influenced by political factors and potential corruption, public distrust is increased. Constant criticism of the administration of justice in the press is a feature the system and this adds to the mistrust which people may have of it.

#### c) Costs

Access to the system is also limited by the user's financial resources and the costs of access. Even though the Constitution guarantees equality of all citizens, the lack of an effective system for the legal representation of indigents makes this right illusory for the bulk of the population.

Courts are partially financed by the fees which they charge users of the system. There are a variety of processing costs which must be borne by legal consumers. Of these, some of the most

important in impeding access to indigents are: photocopying, certifications, notifications, etc. Indeed a number of judicial staff earn their salary through fees which they charge users for their services, such is the case of notaries and receptores.

Of particular concern is a trend to charge users for services. Perhaps the worst instance are Small Claims Courts which rely solely on fees to finance its operations. Property registries have also moved toward a system of user fees to finance costs unsupported by the judicial budget. It is noteworthy that fully 24% of the judicial budget is generated from user fees.

#### d) Location and number of courts

The number and locations of courts and their location determine, in part, popular access to the justice sector and ultimately their confidence in it.

There are a total of 424 judges providing service to a population of 6,798,000 or one judge for every 16,000 inhabitants. This figure is extremely high for the region. For example, Colombia has one judge per 8,000 inhabitants.

The majority of the judges are located in urban areas: 68% of the partido judges and 49% of the instructional judges. The courts have complained of the scarcity of judges given the population growth.

The courts have complained of the scarcity of judges given the population growth. Additionally, there is poor geographical distribution of courts.

The courts most available to the population are the Small Claims Courts and Instructional Courts. Unfortunately, these courts are not found in every municipality. Lack of public transportation, adequacy of roads and climate are all factors which make access to courts difficult, especially for poor users.

#### e) Schedules

Judicial schedules are determinative for adequate access to justice, especially for working classes. Scheduling of hearings are made largely on the basis of tradition rather than utility. Thus, it is not uncommon to find access to courts in metropolitan buildings to be congested since all courts hold their hearings at the same time and on the same day.

#### f) Caseloads and delay

While comparisons of population are one means to determine court needs they do not necessarily determine demand since a much smaller population may be more litigious than a larger one. The most accurate means to determine location of additional courts is to analyze cases filed in previous years and project future growth and special circumstances that might affect caseloads. While the figures are not available for all of the Departments, 1987 figures are available for the three largest. La Paz had 10,659 new cases for a rate of 111 new cases per judge. Cochabamba had 15,840 new filings for a rate of 240 new cases per judge. Santa Cruz had 6,536 new filings for a rate of 126 new cases per judge.

While these figures do not appear as overwhelming as the courts have argued, they have used these and population figures to justify a request to the Congress for the creation of eighty new



courts: 40 in La Paz, 20 in Cochabamba and 20 in Santa Cruz.

There is great disparity in the caseloads of individual courts, even within the same jurisdiction as can be seen from the figures above.

The solutions attempted to curb the growing number of pending cases and the resultant processing delays have been largely the creation of new courts or the adoption of emergency measures.

Studies carried out in other countries have shown that simply increasing the number of judges or shifting their jurisdictions cannot solve the problem. It would take, for example, several times the number of current judges, working for a number of years to clear the current dockets, assuming no growth in the number of current cases filed annually.

A result of judicial inefficiency and growing caseloads is processing delays. A result of these processing delays is a large prison population composed of persons awaiting trial. Thus, 70 percent of persons under detention are awaiting trial. This results in overcrowded prisons. The *Panóptico*, La Paz's principal prison, for example, has a capacity for 300 to 400 inmates yet over 1200 are currently held. Moreover, no separation is made between sentenced inmates and those awaiting trial.

Reviews of Bolivian court administration suggest that there is little commitment on the part of judges to control the movement of cases and avoid backlogs. Although there are isolated pockets of statistical information in the Bolivian judicial system, these are neither collected in a uniform manner nor analyzed and reported at the national level. There is no statistical office at the Supreme Court even though financial and some personnel statistics are kept by those individual departments. Each departmental court reports some statistics on basic caseflow, some of these are published and some are not. There does not appear to have been a clear-cut definition of the purpose of such data or their usefulness.

Processing periods are established by law yet, as mentioned earlier, these are seldom met. There is no evidence of established guidelines for the processing of cases through case management standards.

#### g) Corruption

The existence of corruption among judicial personnel also affects access to the system and the application of justice which is truly impartial.

Bolivian justice has been characterized by corruption. In addition to bribes, favoritism on the basis of political or judicial influence is another form of interference which affects the equity of proceedings. This, however, is much more subtle and more difficult to overcome.

The most serious problem for the judiciary is the absence of adequate controls for the prevention and sanctioning of judicial misbehavior. There is no specialized corps of functionaries dedicated to investigative complaints against the judiciary nor is there information available to the public about the method or institution to which they could direct complaints. In the case of prosecutors it is even less clear since the Attorney General lacks the legal tools to investigate or sanction his/her subordinates.

#### c) Independence:

True justice must be independent, both externally (economic independence, independence for the Judicial Branch to hire and fire its personnel, and functional independence, which implies that judicial decisions are not motivated by external pressures), and internally (freedom for the lower judicial instances to act independently of those above, yet respecting the existing hierarchy).

Latin American justice systems are generally perceived as lacking independence. Several factors have been identified as contributing to this: 1) a tradition of Executive supremacy; 2) political instability; 3) the civil law tradition which emphasizes a bureaucratic role for the judge in application of the laws; 4) the complexity and formalism of the system; 5) lack of a political base which supports and/or to whom the system is accountable; and, 6) the procedures for the selection, promotion and discipline of judges.

The perception which the public has of judicial independence is fundamental in determining their support of the system and their utilization of its resources. Opinion surveys reveal a great deal of popular mistrust in the autonomy of government institutions, including the judiciary.

In terms of external independence, the Judicial Branch does not enjoy complete autonomy since in many instances it is dependent upon the other branches of the Government. The Congress names the Supreme Court while the Senate selects Superior District Court judges from a list presented by the Supreme Court.

Additionally, the Congress approves the budget of the Judicial Branch. The courts estimate that 0.87% of the national budget is allocated to them and that a more appropriate level of funding would be through a constitutionally mandated assignment of a fixed percentage of the national budget. The percentage of the national budget assigned to the judiciary is much smaller than those of other countries in Latin America (6% of the national budget in Costa Rica, and 2% in Guatemala, for example), and in real terms becomes less each year.

The result of the continuing low allocations has been to increase court costs, passing on to the citizen the cost of operating the court system.

The degree to which judicial decisions are free of outside pressure is another aspect of this autonomy. With the exception of political cases there is no feeling of overt interference in judicial decisions. However, there is a sense of fear among judges of antagonizing superior courts. This may lead judges to act conservatively while looking over their shoulders at senior officials.

Ultimately, the greatest test of judicial independence is their reaction to extraordinary periods characterized by the abuse of human rights. During the regimes de facto the courts were tested and generally they failed as persons seeking their protection were ignored and military crimes went unpunished.

#### a) Control by the Supreme Court of the Judicial Function

The weakness or strength of a judiciary is its ability to supervise its branch and the degree to which all judicial functions are concentrated under it.

Bolivia presents one of the most unique cases of judicial decentralization in Latin America. Each seat on the Supreme Court is allocated to a department and judges primarily represent departmental interests which often prevent them from adopting decisions which are beneficial to the national justice sector.

Other judges are named with some degree of intervention by the Supreme Court. However, true power resides in the Supreme Court judge from the district and, in turn, the district court since a system of "judicial courtesy" which respects the wishes of the departmental representative on the Court has been followed.

This system deposits an inordinate amount of power on the individual Supreme Court justices and the district court presidents since all judicial appointments depend on them.

Decentralization also extends to the administrative apparatus of the courts. District court staff and responsibilities are oftentimes broader than those of the Supreme Court. For example, while the initial departmental budget allocation is made at the Supreme Court level, its distribution is made by the districts who also makes all purchases and have unbridled discretion in naming support personnel.

A clear example of the Court's weakness before the district courts is their inability to compel the major departmental courts to enter into the Court's proposed personnel system. Adoption of such a system would curb departmental power and diminish political interference in the selection of judicial personnel.

The Supreme Court is hampered in its ability to implement national policies due to this decentralized system.

Unification of all judicial functions under the judiciary is another factor to consider in determining the strength of a judiciary. In Latin America, Executives have tended to remove to their own branch those courts which deal with the most sensitive political cases such as land and labor. Labor judges are in the Judiciary and are named by the Senate from a slate proposed by the Supreme Court but depend totally on the Ministry of Labor for their budget. Mining court judges are not in the Judiciary, although its members are named by the Senate from a slate proposed by the Supreme Court. The Tax Court members are named by the Supreme Court from a slate proposed by the Ministry of Finance but its members are outside the judiciary.

While their decisions may be appealed to the Supreme Court, the existence of these administrative tribunals, handling some of the most serious cases to national politics, in the hands of the Executive brings into question the degree of independence of these courts while also detracting from the importance of the judiciary to national life.

#### b) Judicial Career.

One of the main guarantees for an independent and professional judiciary is the establishment of a civil service system for all levels of judicial personnel which establishes norms and procedures for their selection, promotion, remuneration and removal.

Most Latin American systems have been historically characterized by political interference in the selection and tenure of judges. Currently however, the concept of civil-service type rules governing judicial personnel is the most serious issue being discussed by Latin American legal scholars.

Formally, Bolivian law calls for the establishment of such a system but it has yet to take the appropriate steps to implement it. Political and departmental interests continue to dominate the criteria

for judicial selection, promotion and removal.

#### c) Tenure

Guarantees that judges will not be removed during their term are a fundamental measure of judicial independence. In order to guarantee stability, judicial terms are lengthy. For example, Supreme Court justices are named to ten-year terms. While this appears to provide the greatest guarantee that judges will not have to worry about being dismissed from their posts prior governments have seldom respected these guarantees.

While all of Bolivia's constitutions guaranteed judicial independence and established mechanisms for the selection and removal of judges, this was seldom followed. From 1936 on each coup brought about changes in the judiciary. The judiciary was massively purged sixteen times since then. A common argument was made each time, "renovation" to correct immorality. The fact that this same argument is being used today by those who seek to replace the current Court is reminiscent of prior patterns.

The judiciary remains highly politicized; its members often represent partisan viewpoints and agendas. Court membership also reflects political patronage. As a result, the administration of justice is held hostage to the whims of party politics. Partisan disputes have often translated into full fledged battles between the Supreme Court and members of the executive and legislative branches. As noted previously, in late 1990, a dispute over the constitutionality of a tax law sparked a major conflict between the legislative branch, controlled by the ruling ADN-MIR coalition, and the Supreme Court. While the legislature threatened to impeach eight members of the Supreme Court, the Judiciary (controlled by militants of the opposition MNR party) threatened President Jaime Paz Zamora with a malfeasance trial. This dispute, has evolved into the gravest constitutional crisis facing Bolivia since the transition to democracy in the early 1980s.

#### d) Selection and promotion

Unlike other judiciaries the Bolivian system can be characterized as partially auto selective. The system consists of a process whereby the Supreme Court is named by the Chamber of Deputies from a list submitted by the Senate. The Executive has no formal decisionmaking authority in this process.

Critics have noted that this selection process politicizes the Supreme Court and the entire judicial system. The majority parties in both houses of Congress invariably elect their members to the Supreme Court. This works quite well if the same political party retains power throughout the ten-year period that justices must serve. However, this has not been the case. As a result of the electoral defeat of the MNR, which controls the Supreme Court, severe conflicts between branches of government have occurred since August 1989. Attempts by the ruling ADN-MIR coalition to control the judiciary have been thwarted by the MNR's refusal to relent control over the Supreme Court.

District court judges are named by the Senate to serve six-year terms from a slate of candidates presented by the Supreme Court. However, under the abovereferred system of "judicial courtesy" the vacancy is really filled by the magistrate representing that district. Partido and instructional judges are named by the Supreme Court, following the same courtesy system, based on a slate of candidates proposed by the District Court. Small claims judges are named directly by the district courts.

Judicial selection is a theme which has been much debated in Bolivia and the arguments dealing with the potential for excessive interference by political parties and/or the other branches of government. Nevertheless, it is surprising that the issue of provincial predominance in judicial selection is not an issue which has been criticized.

The Attorney General appears to have the least authority over personnel decisions in the administration of justice. While the appointment of all prosecutors is to be made by the Ministry of the Interior from lists proposed by the Attorney General, consultation seldom takes place and this, as well as, other personnel decisions are made by the Ministry of the Interior.

Due to the importance of drug issues to U.S.-Bolivia relations the selection of judges, prosecutors and police personnel involved in anti-narcotics operations is also subject to pressure from foreign governments, specifically the United States. Judges and prosecutors in drug courts are routinely screened by U.S. officials who hold almost a veto power over their selection.

The clearest example of foreign interference in the selection of justice personnel occurred recently as the Bolivian government named Colonel Faustino Rico Toro, formerly head of Army intelligence during García Meza's tenure. The U.S. reacted strongly, threatening to cut off foreign aid if the selection was maintained. Rico Toro quickly resigned as the U.S. also called for the resignations of the Minister of the Interior and the commander of the police.

### iii) Evaluation and sanctions

Any personnel system must have a mechanism to evaluate the performance of employees. Such a system should be based on fairness towards those evaluated and utilize verifiable measures of performance. The current system is deficient in both points.

There are no periodic evaluations of personnel and removal decisions are largely left up to the discretion of departmental district courts or their representatives on the Court.

In addition to the foregoing, the system is characterized by a lack of position definitions and classifications (other than the brief description which is contained in the law on the organization of the courts); lack of adequate criteria for selection, promotion and reward (there are some initial steps in this direction); absence of adequate procedures to insure the above; absence of salary scales and benefits based on a rigorous study of positions and functions.

### D) Fairness:

The extent to which this principle is respected can be evaluated by considering certain parameters, among which the most important are: equality of access to the system, impartiality of the judges, equity of judicial decisions, and respect for fundamental procedural guarantees.

With regard to equality of access to the system, as discussed earlier, there are many barriers to systemic entry especially for those persons of lowest income.

According to many, justice favors the rich over the poor while many feel that courts are not interested in equity but rather emphasize compliance with strict application of the law.

### E) Efficiency:

It is very difficult to evaluate the efficiency of the system of justice in terms of costs and benefits. This is so because the system is a very complex one with goals and objectives of public interest, and deals with concepts that are difficult to evaluate quantitatively, such as justice, equity, innocence, etc. In spite of this situation, certain parameters can be used to measure the efficiency of the system.

One of these parameters is the degree to which the system complies with the time limits imposed by the law, in order that justice be swift. As indicated herein, delay is the order of the day in the system with trials exceeding prescribed terms by over 100%. Among the causes for this slowness are: growing caseloads, insufficient number of judges, the numerous exceptions provided for in procedural laws, as well as the inadequate number of support personnel, and almost total lack of physical space, equipment and supplies needed for the work of the judges. Although there are limited statistics on the workloads of the judges, the fact is that there is a considerable backlog of cases, especially in the bigger cities.

Other indicators of the efficiency of the system are the methods for selection of judicial personnel and the professional preparation of same. The criticisms of the system of selecting personnel have already been mentioned. There is also a lack of training programs for judges and support and subordinate personnel of the Judicial Branch.

Finally, the efficiency of the system can be judged by the degree of satisfaction those who work with and in the system feel with regard to the performance of each participant. In general, there is dissatisfaction with the performance of the Judicial Branch personnel.

The system cannot function properly if it does not even have available to it the equipment and services it needs. There are deficiencies in physical facilities, office equipment, libraries, and bibliographic materials.

In general terms, the inefficiency of the system of justice is caused, to a great extent, by the absence of planning and evaluation policies and mechanisms. To respond to this situation, and as a first step, a system must be implemented for the compilation of statistics.

## **The Drug War and its Impact on the Administration of Justice**

No discussion of the Bolivian system of justice is complete without a review of the narcotics issue and current efforts to combat the proliferation of drugs. The United States and Bolivia are engaged in a joint effort to both curb drug production and trafficking and consolidate democratic institutions. The administration of justice, especially the judiciary and police, is at the core of both strategies.

Strategies to solve the drug issue, however, often run counter to Bolivia's desire to establish a functioning system of justice. In the 1980s the Kissinger Commission's recommendations resulted in a number of U.S. Agency for International Development funded regional and bilateral projects designed to strengthen the capacity and effectiveness of judiciaries and police. These projects recognized the necessity of dealing with local institutions and the difficulties of attempting to impose foreign justice models.

In sharp contrast other U.S. agencies, such as the Drug Enforcement Administration and the

State Department's Bureau of International Narcotics Matters, have advocated the establishment of national justice policies whose only goal is to tackle the drug trade. U.S. strategies, which subordinate democratic consolidation to anti-drug policies, may unintentionally weaken the very institutions which other U.S. initiatives seek to strengthen. Moreover, questions arise about the effectiveness of anti-narcotics justice policies in decreasing cocaine exports and successfully prosecuting major drug traffickers in their own countries.

To understand the implications of U.S anti-narcotics policy in the Andes, the coca problem has to be placed in a broader perspective. For centuries the coca leaf has been an essential part of rural life in the Andes. It is an intrinsic part of Andean culture. The Bolivian government's efforts to eradicate the coca leaf have stirred the wrath of coca growers unions which have linked coca production to issues of national sovereignty and charges of U.S. imperialism, especially given the failure to reduce consumption in the United States. Bolivia stands out in the Andean region because alliances between coca growers, guerrilla groups and traffickers such as in Peru and Colombia, have not emerged.

The growth of the cocaine trade has proven to be a boon to those who work in and around the industry. For Bolivia cocaine has emerged as the national economy's major source of foreign income. The cocaine trade represented approximately \$490 million annually to the economy during the 1980's. Given the severity of the economic crisis faced by Bolivia in the mid 1980s and the tenuousness of economic recovery, the boom in the drug trade and strong resistance to U.S. initiatives is understandable.

In this setting, the United States in the 1980s established the following policy priorities for the Andean region:

- 1) to strengthen democratic institutions;
- 2) to help stabilize and reactivate the national economies;
- 3) and, to fight the war on drugs.

As the United States shifted its concern from the containment of communist insurgents in Central America to the repression of drug traffickers, the Andean drug industry was identified as one of the principal threats to U.S. national security and democracy in the region. As result the war on drugs has tended to subordinate democratic and economic initiatives in Bolivia.

U.S. anti-drug policy has focused mainly on decreasing imports from Bolivia and other Andean nations. Current U.S. policy dubbed the **Andean Initiative** has conditioned economic and military assistance on quantifiable reductions in coca and cocaine production and exports. The Bolivian government has insisted that greater attention be given to alternative development programs which include crop substitution, opening of U.S. markets to Bolivian agricultural products, and technical assistance. Following the signing of the Cartagena Declaration in February 1990, the U.S. agreed to combine both interdiction and eradication with alternative development programs. As part of this general approach the United States has also focused on providing assistance to institutions fundamental to the consolidation of democratic processes. Among these are legislatures, electoral bodies, judiciaries and police.

This assistance policy may indeed contribute to democratic consolidation; however, as the policy has evolved anti-drug strategies have subordinated all efforts to strengthen Bolivia's democratic insitutions. In short, an unintended consequence of the emphasis on drugs may be a weakening of the very institutions which the democratic initiatives strategies seek to strengthen. The

greatest potential for conflicting U.S. policies appears to be in the administration of justice sector which is at the core of the anti-drug policies and the democratic development strategy.

The most controversial aspect of the U.S.' program to assist the improvement of Bolivia's criminal justice system is police assistance. While police assistance was barred by U.S. legislation in 1974 as a result of human rights abuses charged to U.S. sponsored training projects, growing concern over terrorism and international crime, especially in narcotics, led the Reagan Administration to seek a number of exemptions to the prohibitions of Section 660 of the Foreign Assistance Act.\* As a result, the U.S. currently provides police training in three areas: deterrence and repression of terrorism through the Anti-Terrorism Assistance program (ATA); narcotics control through the Drug Enforcement Administration, the State Department's Bureau of International Narcotics Matters and the Department of Defense; and assistance to police investigators in Latin America and the Caribbean through the International Criminal Investigative Training Assistance Program (ICITAP) administered by the FBI.

While a long-term goal of U.S. assistance to democratic consolidation in the region is to restrict military involvement in traditional law enforcement and to place police under civilian control, the anti-drug strategy may be leading in the opposite direction. During the middle eighties, the Reagan administration pressured Bolivia to allow joint operations between national militaries and U.S. troops designed to eradicate crops. The most salient exercise was Operation Blast Furnace carried out between July and August 1986. Since these exercises, U.S. policy has been to encourage the governments to expand the role of the military in narcotics interdiction and eradication.

Bolivia has resisted U.S. pressures for a greater role for the military in the war against drugs. Much like their U.S. counterparts, resistance to this pressure has also come from the armed forces who fear that involvement in this activity may corrupt their troops. Historically the military has also found police role demeaning.

Bolivia succeeded in introducing into the Cartagena Declaration language which recognized that "the control of illegal trafficking in drugs is essentially a law enforcement matter." However, this victory was to be short-lived as the U.S. continued to stress the importance of military intervention. In May 1990, the U.S. and Bolivia signed Annex III to a 1987 bilateral anti-narcotics agreement. This agreement calls for the a \$32 million aid package to be disbursed only in the event the Bolivian government orders the military into the drug war. President Paz Zamora succumbed to mounting U.S. pressures and, in early 1991, ordered the army into Bolivia's Chapare Valley. A proposal by the U.S. Embassy could well lead to sealing off the entire valley by converting it into a military zone.

Involvement of the armed forces in the drug war will inevitably increase its size and role. Their growth, at the expense of civilian institutions does not bode well for Bolivian democracy. Even more disturbing is the greater importance they have now acquired after being named the spearhead of this new war. Whether militaries will feel strengthened by this new initiative and follow a pattern similar to their repression of communist insurgencies in the past is undetermined. Numerous scholars have warned of the dangers of resurrecting military institutions and intelligence apparatuses. In fact, they suggest that incipient democracies first empower civilian institutions, especially the administration of justice, to prevent a recurrence of military-based authoritarianism.

A key component of the U.S. democratic assistance strategy is assistance to the Bolivian Judiciary. The objective of this aid is to establish an independent judiciary which will increase popular



confidence in a system of administration of justice based on the fair and impartial application of law. A.I.D. administration of justice projects have developed long-term strategies based on the strengthening of existing judicial systems. In contrast other U.S. agencies, such as the DEA and INM, have imposed several policies which focus on short-term interests in narcotics control. DEA and INM policies include: introduction of foreign legal concepts and procedures designed to expedite hearings; expansion of police rights, especially in interrogations; expansion of the powers of prosecutors; and, decrease the rights of defendants. The result could be the emergence of a trial resembling more a Star Chamber proceeding than those traditionally associated with democratic justice systems.

To assure desirable judicial outcomes the U.S. has encouraged the creation of special courts to try drug trafficking cases. Given the low level of national resources the U.S. has dominated this initiative. Thus, U.S. advisers have drafted proposed legislation, assisted in the selection of prosecutors and judges, and provided training and even payed or subsidized the salaries of these personnel.

Special courts are nothing new to Latin American countries. One of the most criticized aspects of Latin American justice systems during military regimes was the establishment of courts, outside the control of the judiciary to manage "sensitive" cases. The establishment of the new drug courts weakens the attempts to consolidate the Judiciary while encouraging abuse. These developments are even more worrisome given the trend to expand the jurisdiction of these courts to encompass political crimes.

When these policies do not produce U.S. desired results, the United States, in coordination with local officials has engaged in a practice of kidnapping drug traffickers and sending them to the United States. The Bolivian government's decision, for example, to expel Colonel Luis Arce Gomez (the feared minister of the interior under the government of General Garcia Meza) was, not a result of the inability of the local judiciary to try the case but rather a Bolivian response to forestall imposition of sanctions by the U.S. Congress. This decision, clearly in violation of Bolivian law, came under severe attack from members of the Supreme Court who argued against the constitutionality of the action (kidnapping of a national) in the absence of an extradition treaty and because indictments were pending against Arce Gomez in local courts.

Finally, another concern is whether these anti-narcotics policies are effective in achieving the U.S. goals of decreasing cocaine exports and successfully prosecuting major drug traffickers. Evaluations of these programs determined that Bolivian narcotics courts have focused prosecutions on minor offenders with little impact on the drug trade.

In conclusion, U.S. assistance policy to Bolivia's administration of justice system may produce the unintended consequence of weakening the very institution which the initiative seeks to strengthen. As the drug war in Bolivia escalates and more pressure is exerted on the courts to perform, the potential for destabilization of existing structures and even the undermining of democracy is latent. The weaknesses of Bolivian institutions outlined in this paper demonstrate conclusively the dangers of allowing the anti-drug tail wag the democratic initiatives dog.

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