

# Recent Experiences in Coalition and Constituency Building

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## **I. INTRODUCTION**

### **A. The Need for Coalition and Constituency-Building in Support of Judicial Reform**

#### **1. June 1993 NCSC Judicial Roundtable**

At the Judicial Round Table Conference hosted by the NCSC in June 1993, it was generally agreed that although a growing consensus existed among the majority of judicial sector leaders in the Hemisphere that legal and judicial reforms were needed, greater national recognition of the need for reforms, and active support for them, would be an indispensable element to their eventual success. Participants at that Conference felt strongly that leadership for reform efforts must come from the justice sector itself, both to strengthen judicial independence and to help ensure consistency in implementation of the reforms themselves.

Those attending the Conference three years ago said very little about what actions they might be able to take to promote more public support for judicial reform efforts. There was mention of the need for the establishment of "study groups" of interested and influential national leaders that might counter-balance the resistance to change which was expected to arise within the judiciary and the broader legal community. Another possible action, which was mentioned, was the need to collect more data on the operations of court systems and problems encountered in order to better design and defend specific reform initiatives. Other than these two suggestions, however, those who attended the Conference returned home more aware of the consensus they had reached among themselves regarding the need for public support than they were, perhaps, of possible ways in which justice sector leaders might work to generate such support for judicial reform.

#### **2. Reasons for Coalition-Building**

Reforms are made in organizations and procedures because the people involved in, or affected by, those organizations and procedures decide that changes are needed. In February 1994, USAID's Center for Development Information and Evaluation issued a study entitled "Strategic Approaches for Donor-Supported Rule of Law Programs" with the intention of providing an analytical framework for the design of administration of justice programs receiving support from donor organizations. A major finding of that Study echoed the consensus, which had been reached earlier by Latin American judicial leaders at the June 1993 NCSC Conference. The Study's authors concluded that there needs to be a good balance struck between "supply" and "demand" efforts in judicial reform programs; that is, that substantive reforms to improve court administration, access to justice, and other elements of the "supply" of justice need to be complemented by coalition and consensus-building efforts to generate public "demand" for judicial reforms, and public support for specific initiatives taken by politicians and special interest groups with a stake in their outcomes.

The Report's authors reminded readers that rule of law reform efforts need to be viewed as political processes, and not simply reduced to "supply-side" activities designed to improve legal system structures and institutional performance. Justice sector leaders have long recognized this even though few are accustomed to "acting politically" in their professional lives as judges and court officials -however much as individuals they have had to "act politically," in the best sense of that term, to reach personal objectives. "Acting politically" refers to the processes of coalition and constituency building, which are part of everyday life. The CDIE Study's authors describe these terms as follows with respect to judicial reform:

- Coalition building is forging a commitment to judicial reform among society's leaders from various sectors. Coalition-building activities lead to increase public demand for reforms to deal with specific problems affecting the delivery of justice.

- Constituency building is seen as the process of mobilizing support from non-governmental interest groups and concerned government officials for specific reforms.

### **3. Factors Affecting Coalition and Constituency-Building**

The authors of the above-cited Study pointed out several conditions, which affect the prospects for success in coalition and constituency building for judicial reform. They recommended that these factors be considered carefully by those intending to lead reform efforts, given the fact that each country presents its own distinct set of political conditions. Among the most important factors to consider are: the degree of freedom enjoyed by the media and the professionalism and effectiveness of journalists; the extent to which civil society organizations have developed; the level of political will in favor of judicial reform which exists among executive and legislative branch officials; and the readiness of justice sector leaders to lead or cooperate with reform efforts.

The timing of reforms usually depends on how long it takes for coalitions in favor of change to form among a sufficiently large number of those involved with (or affected by) the *status quo*. Since justice systems affect such a broad variety of individuals, significant time and effort normally need to be devoted to building coalitions for reform which include interest groups that might impede reforms if they are not convinced they are needed. The most important groups which must be addressed for judicial reform are citizens (and their organizations and businesses), political leaders, government officials, and the judges and other participants in the formal justice system.

Political support for making reforms is particularly important. In democracies, political leaders respond to demands from the general public and from interest groups. So both politicians and the general public are important constituencies whose support is needed. In addition, in order for desired reforms to be implemented effectively, those individuals working within the judicial system who are responsible for them must also be convinced they are worthwhile. Therefore, constituency-building efforts in favor of reform must also target the professionals working within the justice sector itself.

#### **B. Purpose of Discussion Paper**

One of the key problems confronting justice sector leaders wishing to pursue reforms is to identify how, specifically; they might try to build coalitions and constituencies. The purpose of paper is to review recent rule-of-law reform experiences in two Latin American countries in order to identify different types of coalition and constituency-building actions and the factors, which contributed to their success. This paper is intended to serve solely as a basis for further discussion at May 1996 NCSC Conference, and does not pretend to present definitive conclusions in an area which surely will continue to deserve close attention as judicial reform efforts proceed.

The paper is divided into two sections. The first briefly summarizes particular coalition and constituency-building experiences in Argentina and Bolivia over the last five years, with a view to informing the reader about how specific efforts were undertaken, what their results were, and why. In the concluding section of the paper, an attempt is made to derive tentative lessons learned from the coalition and constituency-building actions described, and a list of illustrative actions and recommendations for building coalitions and constituencies is presented

## **II. COUNTRY EXPERIENCES IN COALITION AND CONSTITUENCY -BUILDING**

### **A. Argentina**

This section very briefly describes some of the coalition and constituency-building efforts made by public officials and private, non-profit organizations, beginning in late 1991. In order to appreciate the relevance of these efforts to the judicial reform process in Argentina, it is necessary to describe briefly the conditions affecting the judicial sector at the time.

Argentina has a federal judicial system. Its provinces have three-level court systems, which operate under the authority of provincial supreme courts. The federal judicial system functions in parallel, under the authority of the National Supreme Court, which also has jurisdiction over the Federal District of Buenos Aires, and the authority to review cases decided by provincial supreme courts. Given Argentina's already well developed legal system, and the long tradition of excellence enjoyed by the country's legal community, by 1991, many judicial reforms had already been implemented successfully, but almost all of them were made by the provincial courts rather than at the federal level.<sup>1</sup>

By 1991, public discontent with the poorly functioning federal judicial system had begun to be expressed, but there was as yet no consensus for reform or much public pressure for change. With seven years' experience under elected government, civil society organizations were operating openly and effectively, and new NGOs concerned with civic education and national democratic development had been established. Argentina's media was, and remains, free. The press kept the public informed, but tended to focus on reporting scandals involving corruption, to which it itself was not immune. Neither the public nor the press was especially aware of the specific problems encountered neither by the courts, nor about judicial procedures in general, although discontent over the lack of judicial independence from the executive branch was clearly expressed. Concern had also begun to be expressed by business leaders, who by then had to compete in more open markets, about the lack of a reliable legal system for regulating business affairs and resolving commercial disputes.

The federal court system suffered from inattention to management, high operating costs and delays. The Executive Branch appeared more concerned with avoiding judicial impediments to its economic and public sector reform programs than with improving the functioning of the court system. Within the judicial system itself, some members of the National Supreme Court were concerned with the need for judicial reform, but felt they could not take action due to serious disputes within the Court. The Minister of Justice at the time was well disposed toward sponsoring reforms, but his Ministry lacked power.

To improve the environment for reform, public education efforts were carried out by civil society organizations. Concurrently, a few public sector officials attempted reforms, many of which failed for lack of firm constituencies in their favor. Actions taken by public sector officials and civil society organizations overlapped, and oftentimes influenced each other, but to simplify this presentation, they are described separately below.

## **1. The National Supreme Court**

*a. Design of a National Judicial School.* During the second half of 1991, two Supreme Court Ministers hired a consultant who had worked at a well known Argentine legal research and education foundation -FORES- to design a program to establish a national judicial school. This effort was initiated with the creation of a committee composed of judges and court staff, which worked to define training needs. Based on these needs, a curriculum was developed and pilot courses were planned. The program developed to establish the School was comprehensive and ambitious. As it was being completed, the Supreme Court sponsored an international conference in October 1991, to discuss different countries' experiences with judicial education, to which an audience of Argentines interested in the issue was invited. Then, no further action was taken to establish the School. The main reason for this was that (now former) members of the Court were quarreling among each other, and preoccupied with poor publicity resulting from judicial system scandals. There was no political will to proceed.

The judicial school planning effort still proved to be very useful. Starting in 1993, several provincial courts became interested in establishing or improving their schools. The same methodology

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<sup>1</sup> For instance, in several provinces, oral processes had been adopted for criminal cases, and procedures for disciplining judges had been institutionalized.

followed earlier for the National Supreme Court was used to develop a consensus within these provincial court systems on how the schools were to be developed. Seven provincial schools have been established or rehabilitated so far.

*b. Visit of Two United States Supreme Court Justices.* Late in 1993, the Supreme Court invited Justices Sandra Day O'Connor and Anthony Kennedy to discuss issues of their choice with the Court and Argentine legal scholars. The Court arranged a private visit with the President of the Nation as an important part of this trip. This initiative, made by the leadership of the Supreme Court, succeeded in exposing both the President and other members of the Court to the idea that reforms were needed to improve the delivery of justice and preserve the principles upon which the national judicial system were founded. The visit was a positive, though small, step in building a coalition for reform.

*c. Diagnosis of Administrative Problems.* In 1993, the Supreme Court engaged the Buenos Aires office of an international management consulting firm to carry out a comprehensive study to identify and analyze the federal court system's key administrative problems, and to suggest an action plan to begin to address them. This study and its financing were arranged by the President and Vice President of the Court in collaboration with business leaders who had offered to work with them. The information collected by the management-consulting firm was comprehensive and reliable. It also proved to be controversial because it documented examples of an out-of-control and costly administrative system. The release of the final report generated immediate resistance, both from Court staff members who feared reform, and from a few ministers of the Court, who were surprised not only by its findings but also that the study had even been commissioned. Soon after the report's release, a scandal broke out concerning actions taken within the Court on a case involving the Executive Branch. Changes were made in Court leadership positions, and the report was buried.

Even without the ill-timed scandal, this well-intentioned initiative by the Court's two chief officers to begin to address long-standing administrative problems would have had a difficult time succeeding because the report and action plan were prepared exclusively by a team of outside experts. Their managerial expertise was undoubtedly needed to do the job well, but they were not requested by the Court to work with Court staff in an effort to generate input and commitment to the reform process. Such a strategy would undoubtedly have delayed issuance of the report, but action on its recommendations might have been more likely.

## **2. The Executive Branch**

*a. Ministry of Justice (MOJ) Mediation Program.* In 1991, the MOJ began cooperating with a local foundation, *Fundación Libra*, to introduce the practice of mediation into the country. The Foundation was created by two appellate court judges after they paid their own way to the United States to study mediation at Harvard Law School. Under the program, a group of pilot courts were selected to initiate the use of mediation in cases where judges decided it might be helpful in resolving disputes more expeditiously and satisfactorily. Mediators were trained, and a permanent center was set up for case resolution as well as training. As a result of the Ministry and *Fundación Libra's* efforts, mediation became an accepted alternative dispute resolution method in Argentina, so much so that it was recently made an obligatory step in most civil cases.

The MOJ also collaborated with another local foundation, *Fundación La Ley*, and USAID to establish eight pilot neighborhood justice centers at which recently graduated volunteer lawyers worked to help make the justice system more accessible to individuals and families not accustomed, or able, to use the courts. The pilot neighborhood centers succeeded in involving young lawyers in efforts to increase access to justice, but they have not yet been expanded at the federal or provincial level. It might have been useful to try to build upon these efforts by encouraging volunteer lawyers to join in broader coalitions for other reform efforts, which could take advantage of their enthusiasm and personal knowledge of the problems encountered by citizens in accessing the justice system.

In both these programs, the MOJ found it very advantageous to cooperate with local NGOs and thereby help build constituencies in favor of the reforms they were promoting. These experiences have also shown that leadership in reform efforts need not come only from the justice sector's formal leaders, and indeed, that individual judges and lawyers can make a big difference.

*b. Minister of Justice Participation in Public Fora and the Media.* Over the last two years, as public interest in judicial reform has grown, the Minister of Justice has routinely accepted invitations to speak in public fora (business associations, civic organizations, and the media) and discuss the Government's judicial reform ideas and plans. These efforts not only have kept the public better informed about the Government's plans, but they also have facilitated dialog among interested parties and helped keep the MOJ itself in touch with public sentiment.

*c. Procurador del Tesoro Interest in Reform.* In Argentina, the *Procuraduria del Tesoro* is responsible for defending the executive branch in disputes involving the public interest. The former *Procurador* involved himself and his organization in reform efforts by investigating issues of relevance to his office -such as the possibility of contracting out cases to private lawyers -and by participating in discussions of reform issues with civil society leaders and donor representatives. His efforts were noticed by the President who asked him to lead negotiations with the opposition party on reforms to the Constitution dealing with the justice sector. This experience showed that successful leadership for judicial reform could be exercised by public officials outside the ministry of justice and the courts.

*d. MOJ Project Preparation Study.* By late 1994, both the World Bank and the IDB had expressed interest in cooperating with the Government in judicial modernization projects. To begin the process, the MOJ requested the World Bank to finance a comprehensive diagnostic study of the problems affecting delivery of justice in Argentina. Something over half a million dollars was spent for the preparation of a report by a team composed of Argentine lawyers selected by the MOJ, and international experts assembled with World Bank support. Team members worked under the authority of the Ministry and made contact with a wide variety of individuals and organizations concerned with judicial reform, but they worked in isolation. Not only did many of the experts not have much contact with other experts on the Team, but also they were not encouraged to bring interested Argentine parties directly into the study process themselves. When the Team's report was presented to the public by the MOJ, it was criticized for not having taken adequate account of reform efforts already underway, and not being internally consistent. The MOJ did not maintain the support of the Ministry of Economy and Finance, without which the World Bank and IDB could not proceed with project design. By neglecting to carry out the investigation in a more inclusive fashion, the MOJ missed an opportunity to begin building coalitions for reform and generating support within the Government and with the public for its efforts.

### **3. The Supreme Court of the Province Buenos Aires**

The Supreme Court of the Province of Buenos Aires (SCPBA) supervises Argentina's largest court system. Its reform efforts have been carried out in a much less politicized atmosphere than those at the federal level. One of the first steps officially taken by the Court was to create a Planning Office. That Office was able to use very modest donor financial support to plan and facilitate a series of reforms. The availability of this funding enabled the Planning Office<sup>10</sup> to organize pilot projects. The Office's relationship with the donor gave it more stature within the Court and access to technical expertise. One of the consistent features of the programs the Office has implemented on behalf of the Court has been its reaching out to those to be affected by particular reforms to include them from the start. This was done in programs to reorganize court personnel, train public defenders, decentralize both planning and administrative responsibilities to district judges, carry out public information campaigns, and improve the provincial judicial school. Reforms presented to the full Court for its approval were already developed in a participatory manner and agreed among representatives of those to be most affected, and once approved by the Court, they were then implemented with less difficulty.



#### 4. Civil Society Organizations

Beginning in 1991, leaders from two sectors of civil society took action to increase demand for judicial reforms. Their interests were sparked by different sets of concerns, but they found they could collaborate. The interest of business leaders in judicial reform began with their concern that the legal environment for business development be more stable. That of many civic leaders had its origin in their desire for stronger democratic institutions, and a fairer and more accessible justice system for individual citizens. Both groups went to work to increase public demand for change and to cooperate with public sector reformers trying to implement specific reform programs.

*a. Business Associations.* The first Argentine business association to voice its concern publicly about the condition of the Argentine justice system was IDEA, the *Instituto de Desarrollo Empresarial Argentino*, when it introduced the topic of what it called "judicial security" at its 1993 annual conference. By "judicial security," the business leaders belonging to IDEA meant to refer to a more stable rule of law under which business firms could be confident that laws governing commerce would not be modified by executive branch fiat, and could depend on a court system which would settle disputes fairly - including those with governments and public sector entities. Broaching this issue publicly succeeded in raising the Government's sensitivity to it and increasing public awareness of the need for judicial reform. IDEA and its leaders complemented their initial action by holding regular breakfast meetings to which IDEA invited a variety of individuals from the justice and business sectors to discuss reforms carried out in other countries and Argentine reform proposals. They also met individually with officials both from the National Supreme Court and the MOJ to offer private sector assistance for reforms should those organizations decide to undertake them.<sup>2</sup>

In 1994, another business organization, FIEL -the *Fundación de Investigaciones Economicas Latinoamericanas* -decided to prepare a comparative study of the financial costs of operating court systems in Argentina and other countries. This study was presented at the annual meeting of the Argentine Bankers Association (ADEBA) and resulted in extensive press treatment of the extremely high cost of Argentina's justice system relative to those of other countries where courts are perceived to operate with fewer problems. FIEL's study also produced a wealth of information, which could be put to good use later to justify and help design specific reforms.

These experiences showed that business leaders can be very effective both in helping build coalitions to increase demand for judicial reform and in collaborating with judicial sector leaders willing to push ahead with reforms.

*b. Civic Organizations.* Six Argentine NGOs have been especially active in efforts at coalition and consensus-building. Almost since its beginning, *Poder Ciudadano* has sponsored programs to inform the public about the importance of judicial reform and how specific reforms affect their interests as citizens. Its programs have included seminars; publications and press briefings designed to increase public debate of judicial issues. One notable example concerned how judge candidates needed to implement new oral procedures for federal criminal trials were being selected by the Government. Under a separate anti-corruption program *Poder Ciudadano* ran, it included cases concerning judicial sector independence in its interest group awareness efforts.

Other NGOs which took their own initiatives to help build coalitions in favor of reform were:

- 1) *Fundación Libra*, whose initiatives in working with the MOJ in mediation programs was mentioned above.
- 2) The *Centro de Estudios Institucionales* (CEI), which facilitated collaboration between Palermo University and Yale University for the establishment of a Masters of Law degree

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<sup>2</sup> The National Supreme Court accepted an offer which was facilitated by business leaders to have an international management consulting firm do the study and action plan for administrative reform mentioned above.

- program, one of whose goals was to promote research and greater involvement by law students in reform issues.
- 3) FORES, which implemented a successful legal aid program to train public defenders, law professors and bar association officials.
  - 4) *Conciencia*, women's civic education NGO, which included justice awareness, issues in its activities.
  - 5) *Fundación La Ley (FLL)*, which collaborated closely with USAID in efforts to support various Argentine judicial reform efforts.

One of FLL's most successful programs involved extending invitations to judicial experts from the United States to speak in Argentina. Topics included ADR, judicial education, courts and the press, and the advantages of forming court associations, among others. The speakers made presentations to different audiences assembled by a variety of public and private organizations interested in judicial reform. Their visits to Argentina helped spark more discussion of judicial reform topics and expose leaders from various sectors to reform experiences in other countries.

FLL also arranged a number of orientation trips to U.S. courts and judicial institutions by groups of Argentine judges with particular interests in judicial reform. An example of this was a trip made by leaders from five provincial supreme courts to the National Center for State Courts in mid-1994. In 1995, a special program was arranged for a member of the National Supreme Court and other federal judges. In addition to enabling judicial leaders to become more familiar with the operation of U.S. court systems, making the trips together helped form coalitions among Argentines interested in reforms which remained intact after their return home.

One of *Fundación La Ley's* most successful coalition-building initiatives was to call together representatives of all the organizations, public and private, which had been collaborating under the FLUUSAID Administration of Justice Program. The group included *Poder Ciudadano*, *Conciencia*, *Fundacion Libra*, FORES, the CEI, IDEA, the MOJ, the National and Province of Buenos Aires Supreme Courts, and the *Procurador del Tesoro*. Originally, FLL's idea was for members of the group to share information about each other's reform efforts, but as the representatives talked, they generated enthusiasm for working together on common initiatives. Their first joint effort was to commission a poll with the Gallup Organization in late 1993 to collect specific data on public attitudes regarding the justice system and what citizens might do to promote judicial reform. Each organization contributed questions to the poll and used the poll's results in its own public information programs.

The efforts by civil society organizations described above greatly increased public dialogue and knowledge regarding judicial reform. Coalitions in favor of reform and public demand for judicial improvement grew as a result. By mid-1993 when the Government decided to agree with the main opposition party that constitutional reform should include creation of a *Consejo de Magistratura* to administer the Federal Court System and nominate judge candidates, the Argentine NGO community was prepared to respond by helping to ensure public involvement in this important reform initiative. *Conciencia* and *Poder Ciudadano* each sponsored seminars and worked jointly to help encourage media attention to ongoing negotiations regarding the details of the *Consejo's* establishment.

Nevertheless, efforts to implement the national-level structural reforms called for in the amended Argentine Constitution are taking considerably more time than anticipated. This would appear to provide further evidence of the need to promote more public demand for reforms. Meanwhile, judicial reform continues in the provinces, where numerous mediation programs, judicial education and administrative reform efforts are underway.

## **B. Bolivia**

By the early 1990s, Bolivia had experienced more than seven years of unprecedented political and economic stability. The country enjoyed a free press, and a wide variety of civil society organizations were operating. Nevertheless, the press was unfamiliar with the technical and systemic problems

of the justice sector, and while several Bolivian and foreign NGOs were working in the area of civic education, none focused specifically on the problems of the justice sector.

The impetus for judicial reform did not begin with actions taken by the press or civil society leaders, nor did it arise from within the justice sector itself. It came about as a result of concerns expressed by individual political party leaders, and then grew into a political consensus for reform as the press and the public discussed judicial problems more frequently. Significant reforms within the justice sector began to be implemented in 1993. To date, they have consisted mostly of structural and legal changes needed to enable the judicial system to operate in a more institutionally sound and fairer, manner.

## **1. Start of the Judicial Reform Process**

Bolivia's judicial reforms have their roots in debates, which occurred in 1991 among political party leaders in Congress. These debates concerned the possibility of making various amendments to the Bolivian Constitution. Congressional leaders -one of the most prominent of which is now the President of the Republic -were responding to public discontent being expressed about judicial corruption. They were also aware that Bolivian citizens had become accustomed to seeing improvements in the operations of the Executive and Legislative Branches as the country's democracy steadily became stronger, but that these improvements had not yet been matched within the Judicial Branch. A few political leaders saw a need for across-the-board changes to address not only the justice system's structural and legal framework but also to begin to improve access to justice for the majority of the population, and to significantly strengthen the System's institutional capabilities.

Currently, the judicial reform process in Bolivia is moving ahead briskly under the leadership of the Ministry of Justice. The successes being achieved are due in large measure to the fact that close attention has consistently been paid to coalition and constituency building as an integral part of the reform process itself. In fact, this has characterized Bolivian reform efforts from their start.

## **2. Work of the *Consejo Nacional de Reformas del Poder Judicial (CONARE)***

In mid-1991, CONARE was established by presidential decree. Its creation followed activity within the Bolivian Congress to mobilize opinion in favor of Constitutional amendments mentioned above. The discussion of the need for constitutional changes created an opportunity to initiate a judicial reform process since the Executive Branch at the time was anxious to respond to growing public demand for judicial reform. The idea to establish a council came from a Bolivian attorney, who was the Representative of ILANUD in Bolivia, and a Bolivian officer of USAID/Bolivia. They decided to visit Costa Rica to find out about experiences there with the use of a judicial council a few years earlier. That Council succeeded in beginning to build a coalition for reform by facilitating a shared effort to define priorities. These two individuals returned to Bolivia enthusiastic about what they had learned in Costa Rica, and encouraged the Government to create a council.

The *Consejo de Reformas del Poder Judicial* was intentionally composed of both technical and political representatives from a broad group of organizations within the executive, legislative and judicial branches, the Bar Association, the Attorney General's Office, and others. The Vice President of the Republic, who is also President of the National Congress, was appointed as the Council's President. Broad legal sector representation on the Council was expressly sought for two reasons: first, to increase the chances of reaching a consensus agenda for reforms which would serve as a basis for a construction of a coalition in favor of judicial reform; and secondly, to avoid excessive focus on internal court operational issues in favor of considering sector policies and institutional structures.

The Council developed an agenda of seven items and completed work on two of them via two subcommittees which elaborated two draft laws: the *Ley de Organización Judicial* and the *Ley de Ministerio Público*. The first draft law included provisions to unify the Court system, establish procedures for disciplining judges and lawyers, and providing staff support for judges. The second initiative

called for constitutional amendments to transform the Attorney General's Office into a strong and independent Prosecutor's Office to be responsible for all criminal investigations and prosecutions, which would have its own investigative police force. It also called for establishing a Public Defender's Office. Both these initiatives were successful because they were developed in an open and participatory manner (several seminars and public events were held), and due to the effective political leadership provided by the Vice President, who was determined that the Council would obtain results before the next national elections in 1993.

### **3. Creation of a Ministry of Justice and Amendment of the Constitution**

During the 1993 election campaign, all the major parties agreed that judicial reform would be a priority for the next government. This consensus was another successful outcome of the Council's work, and it set the stage for the newly elected Government to move briskly to begin the process of implementing reforms.

One of the most active members of the Council, a former senator belonging to the same party as the President-elect, convinced him to support the creation of a Ministry of Justice to pursue the judicial reform agenda. With the assistance of a donor organization, the ex-Senator consulted the statutes of other countries' ministries of justice and outlined MOJ responsibilities.

The new judicial institutions established by the 1994 constitutional amendment were: 1) the Attorney General's Office and the Defender of the People (Ombudsman), which are to operate independently of the courts; 2) a *Tribunal Constitucional* to operate separately from the Supreme Court; and 3) a *Consejo de la Judicatura*, which is to nominate (and discipline) judges and administer the Court System.

### **4. Early Reforms Led by the Ministry of Justice**

After creation of the Ministry of Justice as part of the overall restructuring of executive branch ministries, in early 1994, the President appointed a respected lawyer and political independent as his second Minister of Justice, in an effort to help ensure technical consistency in the reforms to be developed. The Minister decided to focus first on urgent problems with the criminal code and turn attention later to addressing structural problems in conformance with the recently ratified constitutional amendments.

The Ministry's first successful initiative was the *Ley de Abolición de la Prisión por Deuda y Apremio Corporal*, which eliminated the imprisonment of debtors, a procedure which had been greatly abused in the past. The Bar Association initially opposed changing the law. The Minister recognized that both political leaders in the Congress and the public at large would need to learn more about the draft measure in order for it to be made law. He therefore decided to work on several fronts to build a constituency in favor of the new law. He held press conferences designed to explain to the public how the proposed law would affect individual rights and interests, and met with journalists to discuss the significance of the proposed reform. A series of breakfast and luncheon meetings was held with congressional party leaders, at which Ministry personnel sought suggestions, which they were careful to use to improve the draft legislation. Prominent lawyers were also convinced by the Ministry to argue with their colleagues in the Bar Association in favor of changes in the law. Finally, after these efforts had succeeded in developing a coalition in favor of the draft law, the Minister formally presented it to the Cabinet for discussion and approval prior to submission to Congress. The Congress approved the draft law as presented, something rare in Bolivia given the right of members of Congress to change draft laws on the floor up until just before final votes are taken.

After passage of this law, the Ministry moved quickly to another criminal code reform, the *Ley de Fianza Juratoria*, to reform bail and pre-trial detention procedures, which were also perceived to have been abused in the past. For the first time in Bolivia, the new legislation would allow pre-trial release in appropriate cases without payment of monetary bail. The Minister and his staff employed a

strategy similar to that they had used in building a constituency for the *Ley de Abolición de Prisión por la Deuda y Apremio*. As a result, it too was passed intact and unanimously by the Bolivian Congress.<sup>3</sup>

Following passage of this law, the Ministry obtained donor support to hold a training workshop in Santa Cruz for its seventy-person Office of Public Defenders. This Office was made responsible for the immediate review of the cases of all detainees to see if they warranted release and for seeing that the new law was implemented consistently. The decision to hold this workshop reflected the Ministry's strong belief that its work must extend beyond the drafting of new laws to active collaboration with the constituencies it has helped to form to ensure those reforms are implemented well. As a result of the two new laws, a positive atmosphere regarding respect for human rights and constitutional guarantees has been fostered which is essential for the pursuit of further reforms.

## 5. Current Reform Efforts of the Ministry of Justice and the Supreme Court

In September 1994, the Ministry of Justice and the Supreme Court hosted a weeklong conference to review procedural code reform trends in Latin America and discuss prospective changes in the civil and criminal procedure codes. The idea was to decide on an agenda for procedural reform by consensus. Judges, lawyers, politicians and representatives of other relevant justice-related offices were invited. Argentine and Costa Rican experts reviewed criminal procedure reform efforts being carried out in their countries, and two Ministers of the Uruguayan Supreme Court made presentations on Uruguay's experience in implementing its major civil procedure reforms, including use of the oral process. It was agreed at the Conference to focus first on a new *Ley de Código Procesal Penal* and to keep discussing whether civil court procedures might be changed.

To assure careful development of the Criminal Procedures Code reform, the Ministry established an advisory committee of prominent attorneys, judges, and law professors, engaged a young law professor and a judge who had studied criminal law in Costa Rica as principal drafters, and arranged for nine months of donor-financed technical assistance from Argentina and Costa Rica. The Ministry was careful to keep control of the consultation and drafting process itself. Regional seminars are presently underway, and the draft law will soon be sent to Congress.

Despite the Constitutional amendment calling for establishment of a *Consejo de la Judicatura* and a *Tribunal Constitucional*, detailed discussion regarding the structure and procedures of these two new bodies continues. Some of this debate has reflected the fact that the changes are still not welcomed in some quarters. The Supreme Court wants to ensure that its authority is not unduly proscribed by the *Consejo de la Judicatura*; and political parties, traditionally a dominant force in designation of judges, now must adjust to the idea of influencing the selection of judges through participation in processes for gaining Senate approval of judicial nominations to be made by the *Consejo*.

In drafting the enabling laws for both new institutions, the Ministry and the Supreme Court naturally have had to work closely together. Cooperation between the Executive and Judicial Branches is proceeding relatively smoothly, due in part to efforts by the members of both organizations to maintain good working relationships. The Supreme Court has established a *Consejo de Reformas Judiciales* to work directly with the Executive and Legislative Branches to facilitate its participation in the reform process.

With donor assistance, the Supreme Court also has actively promoted awareness and discussions of alternative dispute resolution methodologies. The Court initiated a series of workshops around the country on court-annexed alternative dispute resolution processes, in which judges from several districts, Ministers of the Supreme Court and law students participated. Mediation trainers from the Bogota Chamber of Commerce were invited to carry out mediation simulations. As a result

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<sup>3</sup> Later, the personal efforts of the Minister to improve the treatment of the accused were recognized by the Southwestern Legal Foundation of Southern Methodist University, with a human rights award.

of these efforts, it has been agreed that a pilot court-annexed mediation project will be developed through joint efforts by the Supreme Court and the Superior Court of Cochabamba.

As for the MOJ; it is now turning its attention to new reform areas: partial changes in the criminal code to incorporate criminalization of computer crimes, money laundering and other recent criminal phenomena; changes in civil court procedures and eventual implementation of the oral process there; modernization of the commercial code; and a law for uniform administrative processes. These areas have been selected as a result of a series of consultations with interested parties. The Ministry decided to keep meeting with civil court judges periodically despite the reluctance they expressed at the September 1994 Workshop about making procedural changes, and some judges now favor making incremental changes. Sentiment within the Bar Association has also changed in this regard. These experiences show the value of making sure coalition; building efforts are carried out on a continuous basis.

Among the factors which have helped make Bolivia's coalition and consensus-building efforts effective are: 1) the successful experience of the *Consejo de Reforma de/ Poder Judicial* in establishing the basis for a broad and lasting coalition in favor of judicial reform; 2) the full political support of the President of the Republic; 3) the Minister of Justice's commitment to elaborating reforms in a participatory manner, to personally lobbying a wide variety of interest groups to keep the reform agenda moving ahead, and to working with the press, radio and television media to ensure public opinion is well informed; 4) the importance of generating accurate statistics to use in the Ministry's communication programs; 5) the continuity and permanence of the Ministry's consultations with various interest groups and individuals; 6) the Bolivian authorities, insistence on taking the lead in elaborating the content of reforms, and setting the strategies which will be followed to implement them; and 7) being willing to learn from the judicial reform experiences of colleagues in other countries.

## **6. Actions Taken by the Private Sector**

The Chambers of Commerce of La Paz, Cochabamba and Santa Cruz have worked with the Inter-American Bar Foundation (IABF) since 1992 to establish Bolivia's first three commercial arbitration and conciliation centers. In order to move this initiative ahead; the Chambers collaborated with the IABF to sponsor visits to the Bogota Chamber of Commerce to observe its programs. In addition, numerous workshops, study groups and training sessions were carried out to build consensus among the commercial firms, attorneys, and judicial sector officials involved that arbitration and conciliation programs could be useful in Bolivia, and to decide how they should operate in the distinct business environments encountered in the country.

Two Bolivian NGOs have also been active in coalition-building, *Fundacion San Gabriel* (FSG) and *Capacitacion y Derechos Ciudadanos* (CDC). Some of FSG'S female members who were active in providing free legal assistance to the urban poor decided to cooperate together to draft a domestic violence law and push for its passage. Mostly by force of their OW11 persistence and determination, these lawyers raised public awareness of the fact that a law was needed and lobbied the Executive Branch and Congress. With the support of the *Subsecretaria de Asuntos Etnicos, de Genero y de Generaciones*, the *Ley de Violencia Doméstica* was passed in mid 1995. The GOB has been very active in public awareness campaigns regarding the law. Were it not for the persistence of the FSG's advocacy, the law would not exist.

CDC was established with the assistance of an U.S. NGO, the National Institute for Citizen Education in the Law. CDC uses a volunteer staff of law students and professors to educate disadvantaged groups and youth about their rights as citizens. Over seventy current and former law students are volunteering, and some 6000 people (prisoners, poor, and youth) in Bolivia's three major cities have received information. CDC'S modest program responds to a commonly only perceived problem in the country: a widespread lack of knowledge by citizens of their rights and of basic Bo-

livian laws. As in other countries, developed and developing, the conviction exists that the more citizens are aware of their rights, the better the justice system will function.<sup>4</sup>

### III. CONCLUSIONS

The conclusions given below are intended to serve as a basis for discussion only and do not pretend to be definitive. The Annex includes tables prepared to facilitate comparison of coalition and constituency- building actions taken in Argentina and Bolivia.

#### A. Lessons Learned

Some lessons regarding coalition and constituency-building can be derived from the experiences in Bolivia and Argentina described above which may be of use in other countries. Before turning to them, it would be useful to recall the "lessons learned" which were mentioned by the authors of the USAID Rule of Law Study mentioned in Section I:

- A strong civil society is an effective base for launching efforts to mobilize constituencies to support ROL development.
- There are few examples of bar associations serving as major sources for reform initiatives. The commercial sector can be an important reform constituency.
- Although NGO coalitions may prove difficult to build, they can form a strong force for legal reform.
- Free and effective media are needed to support constituency-building.
- Reliable court statistics are needed to inform public debate on ROL.
- Opinion surveys are invaluable for assessing public demand for judicial reform.

From the Argentine and Bolivian experiences, we might also conclude:

- Reforms will not occur in the absence of political will on behalf of the courts. Executive Branch/Presidential support is also very desirable, and should be sought, but it is not essential in today's democracies if court leaders are determined to do the coalition and constituency-building needed to effect reforms.<sup>5</sup>
- Active participation in the reform-making process by a broad spectrum of interested parties is an indispensable ingredient to success. Broad participation in establishing priorities and designing specific reform measures must begin early in the process.<sup>6</sup>
- Individuals and organizations from both the public and private sectors who are interested in judicial reform need to reach out to each other and collaborate. Coalition-building efforts should be carried out continuously in order to keep the consensus in favor of reform strong, and to be prepared to take advantage of opportunities for initiatives when they arise.
- Leadership of reform efforts from within the justice sector can come from both its formal and its informal leaders.
- Those wishing to promote reform need to ensure they are well informed about how their court systems are functioning, legal and other problems affecting the delivery of justice in their countries, what has been successfully done to address judicial problems in other countries, and what resources can be mobilized, both within their countries and from foreign donors.

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<sup>4</sup> In this regard, mention should also be made of the fact that the District Court of Tarija established Bolivia's first Court public relations office. It is expected that the Courts in La Paz and Cochabamba will SOON do the same.

<sup>5</sup> In Argentina, reform is occurring in those court systems where court leadership has taken an interest in reform, and not in others. This is true even though executive branch support for reform, whether at the national or provincial level, is either neutral or not consistently in support of judicial reforms. In Bolivia, the Executive Branch is taking the lead, and successes are being achieved because the courts are cooperating.

<sup>6</sup> The success or failure of several reform efforts cited above was principally due to whether or not adequate participation was sought and achieved.

- Programs to educate sectors of the public regarding their rights as citizens can be useful in most countries in raising the awareness of citizens about the relationships between the effectiveness of the justice sector and their everyday lives.
- The knowledge gained through the use of polls and focus groups about widely shared public concerns should be used by reform leaders to make sure their reform agendas are demand-driven, thereby generating public support for the reform process itself.<sup>7</sup>

## **B. Illustrative Actions and Recommendations for Building Coalitions and Constituencies for Justice Sector Reform**

### **1. Establish Commissions to Develop Reform Agendas and Task Forces to Elaborate and Promote Specific Reform Measures**

Successful Examples: Bolivian *Consejo de Reformas del Poder Judicial*; initiatives of Supreme Court of the Prov. of Buenos Aires; Bolivian Conference to define priorities for procedural code reforms.

Keys to Success:

- Ensuring broad participation from all interested organizations and sectors. Providing for mixed participation of both technical and political leaders.
- Exercising good committee leadership -for commissions, preferably a high-level political official or a revered senior citizen enjoying wide public confidence; for task forces, persons with both technical knowledge and "people skills."
- Reaching out to special interest groups and experts to incorporate their inputs on particular issues.
- Balancing time allotted to complete work. Adequate time to develop consensus should be given, but deadlines also have to be set and met.

### **2. Carry Out Diagnostic Studies as Basis for Action Plans.**

Successful Examples: None.

Keys to Success:

- Ensuring ultimate supervision by national experts. Use foreign experts familiar with reforms in other countries to complement efforts of national experts should be welcomed.
- Reaching out within country to interest groups to involve them in analysis, thereby incorporating them into reform constituencies.
- Providing for effective cooperation and coordination among team members.
- Getting participants in system to define its problems and Suggest reforms.

### **3. Carry Out Public Awareness Efforts**

Successful Examples: *Poder Ciudadano* (A); *Capacitacion y Derechos Fundación La Ley* (A); *Conciencia* (A); Bolivian and Argentine Ministers of Justice.

Keys to Success:

- Targeting various interest groups to learn about their particular problems.
- Using press conferences, formal and informal press briefings, published interviews to explain reform agendas.

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<sup>7</sup> e.g. two new Bolivian laws affecting treatment of suspects .



- Employing qualified volunteers. Their participation helps them learn about the system and makes them possible reform advocates.
- Being dedicated, determined, and imaginative.
- Taking advantage of foreign experts as speakers.

#### **4. Network Among Groups Concerned with Reforms**

Successful Examples: Bolivian Minister of Justice; Bolivian Chambers of Commerce Arbitration and Conciliation Centers; *Fundación La Ley* (A); *Fundación Libra* (A); *Procurador de Tesoro* (A).

Keys to Success:

- Targeting a wide variety of interest groups: civic organizations; business associations; advocacy groups; officials of other justice sector institutions; employees of the court system; bar associations; donor organizations; colleagues from other countries (directly and through regional associations).
- Taking advantage of opportunities to participate in public and semi-private fora. Keeping in regular contact with network.
- Encouraging colleagues within the justice system to contact and cooperate with NGOs.

#### **5. Maintain Contact with Political Leaders**

Successful Examples: Argentine business leaders; Bolivian Minister of Justice; *Fundación Libra* (A).

Keys to Success:

- Taking advantage of opportunities both for informal contacts and formal occasions to address congressional committees and cabinet meetings.
- Staying in touch with donor organizations. (This can help leaders from both NGOs and the justice sector itself to make contacts with national organizations and individuals they would like to influence.)
- Ensuring important political contacts to target are not neglected: the President of the Nation, Ministers of Finance, opposition party leaders, congressional leaders, and local government leaders.

#### **6. Promote Partnerships to Implement Specific Reforms -between public and private organizations, two public organizations, or two private ones**

Successful Examples: *MOJ-Fundación Libra* (A) (public-private); *MOJ-Supreme Court* (B) (public-public); *Fundación La Ley-Other NGOs* (A) (private-private).

Keys to Success:

- Forming informal groups of NGO and justice organization representatives to interchange ideas. Meeting regularly.
- Making specific proposals for cooperation between NGOs and justice sector officials.
- Avoiding vague agreements for cooperation. Focusing agreements on specific programs.

## 7. Keep Well Informed

Successful Examples: Supreme Court of the Province of Buenos Aires; Bolivian Supreme Court's court-connected ADR programs; *Fundación San Gabriel* (B); *Fundación Libra* (A); FIEL and IDEA (A).

Keys to Success:

- Asking those who work in areas of interest to define problems as they see them. Getting reliable statistics on court operations.
- Educating yourself about the specific areas in which you want to advocate change.
- Learning what other countries have done to address similar problems --through visiting speakers, visits to, other countries, and participation in regional conferences.
- Using the information gathered for public awareness campaigns and to defend reforms.

**ANNEX**  
**COALITION AND CONSTITUENCY-BUILDING ACTIONS COMPARED**

The coalition and constituency-building actions taken in Argentina and Bolivia are presented in the tables below for the purpose of comparing factors which affected their success or lack thereof. Separate tables divide the actions into two categories: those designed to help create coalitions generally in favor of judicial reform; and those designed to help form constituencies in favor of specific reform measures. Within the tables, very successful actions are marked "VS"; successful actions with less impact are marked "S"; and activities, which were not successful, are marked "NS".

**1. Actions by Justice Sector-Related Officials and Organizations to Generate Support for Reform**

<b>ORGANIZATION</b>	<b>ACTION</b>	<b>RESULTS</b>	<b>FACTORS</b>
Bol. Consejo de Reformas del Poder Judicial (CONARE)	Agreement on reform agenda	VS -Broad coalition formed; political consensus for reform achieved; two laws drafted	Broad participation, both technical and political; good leadership; learned from Costa Rican experience.
Arg. Min. of Justice	Public presentations informed	S -interest groups, public and Gov't better	Minister's willingness; NGOs not antagonistic
Arg. Procurador del Tesoro	Participated in discussions with interest groups	S -President requested he lead negotiations to amend Constitution	Interested in reforms; kept confidence of Pres.; stayed in contact with pvt/NGO interest groups
Arg. National Supreme Court	Visit of two U.S. Supreme Court Justices	S -President and Mins. of Court made more aware of reform needs	Similarity of U.S. and Arg. Systems
Arg. MOJ	Cooperation with World Bank for diagnostic study	NS -Results discredited; unable to gain support of Min Econ.; missed opportunity to construct coalition.	Inadequate cooperation among team members; lack of participation by interested Arg. Parties.

**2. Actions Taken By Non-Governmental Organizations to Generate Support for Reform**

<b>ORGANIZATION</b>	<b>ACTION</b>	<b>RESULTS</b>	<b>FACTORS</b>
Arg. Fundación La Ley	Expert speakers/visits to U.S. courts and judicial institutions	VS -Interest groups informed/engaged; coalitions formed	Speakers invited were practicing professionals; speakers were scheduled with variety of local groups; court officials learned of experiences of colleagues; linkages between courts made.
Arg. Poder Ciudadano	Judicial education and corruption awareness	VS -Increased demand for reforms	Contacts within both justice sector and me-

	programs; media efforts		dia; credibility of PC founders; imaginative programs; donor funding.
Bol. Capacitacion Y Derechos Ciudadanos	Citizen rights programs	S -Over 6000 people informed; over 70 volunteer lawyers involved	Responds to recognized need; dedication of volunteers; donor support.
Arg. Instituto de Empresarios Argentinos (IDEA)	Public awareness and seminars on "judicial security	S -Raised GOA sensitivity re legal environment for business; got business leaders involved in coalition for reform	Prestige of organization; press and foreign contacts; took follow-up actions
Arg. Fund. de Investigacion Econ. Latino-amer. (FIEL)	Comparative study of judicial administration costs	S -Generated reliable info to support demand	Reputable org.: good foreign contacts; did for reform thorough investigation.

### 3. Actions Taken by Justice Sector-Related Officials and Organizations to Promote Specific Reforms

<b>ORGANIZATION</b>	<b>ACTION</b>	<b>RESULTS</b>	<b>FACTORS</b>
Bol. Ministry of Justice	Pursuit of its legal and structural reform agenda	VS -Two laws passed and others successfully drafted; popular support for reform generated; forward momentum on	Presidential support; groundwork by CONARE; active coalition-bldg. by Minister; participatory reforms maintained dev. of reforms; continuous contact with interest groups; nationals lead effort
Arg. Supreme Court of the Prov. of Buenos Aires	Creation and operation of Judicial Planning Office	VS -Implementation of decentralized planning; personnel mgt. improvements; pub. defenders trng.; public relations program; etc.	Participatory manner in which office operates; full support of Court; availability of pilot project funds from donor; necessary time spent forming consensus.
Bolivian Government	Passage of Constitutional amendments	VS -Establishment of new judicial sector institutions	CONARE created consensus for reforms; solid political support
Arg. MOJ and Fundación Libra	Official introduction of use of mediation	VS -Use of mediation as ADR mechanism growing rapidly; disputes resolved more rapidly	Public-private partnership worked well; F. Libra created by practicing judges; their dedication to reform
Bolivian Supreme Court	Court-annexed mediation and conciliation	S -Consensus achieved to pursue program; pilot project being developed.	Broad participation sought; learned from experiences in another country

<b>ORGANIZATION</b>	<b>ACTION</b>	<b>RESULTS</b>	<b>FACTORS</b>
Arg. MOJ	Neighborhood justice centers	S (but only in 8 areas); pilot projects not multiplied; volunteers could have been used for other reforms	Limited MOJ financial commitment and interest
Arg. Supreme Court	Plan for National Judicial School	NS -No action taken	Infighting and lack of political will
Arg. Supreme Court	Diagnosis and action plan for administrative reform	NS -Report not used	Not carried out in participatory manner with Court personnel whose concurrence needed to implement plan; only two Court Mins. Involved

#### 4. Actions Taken by Non-Governmental Organizations to Promote Specific Reforms

<b>ORGANIZATION</b>	<b>ACTION</b>	<b>RESULTS</b>	<b>FACTORS</b>
Arg. Fundación La Ley	Sponsored formation of informal group of NGOs and public sector orgs. interested in judicial reform	VS -Gallup poll; Consejo de Magistratura public awareness programs	Organizations with different motives for interest in reforms found they could work as one constituency; participants generated new ideas together; better programs emerged
Bolivian Chambers of Commerce	Commercial Mediation and Conciliation Centers	VS -Centers established in country's 3 main cities; draft law pending	Broad-based efforts; linkage with IABF and another country
Bol. Fundación San Gabriel	Drafting, and lobbying for, domestic violence law	VS -Law passed, and public awareness campaigns active	Responded to felt need; successful public-private coop.; perseverance
FORES (Arg.)	Legal aid program	VS -Trained public defenders throughout country; increased awareness of importance or legal aid	Willingness to implement specific reform on own; receptivity of public defenders and courts
Arg. Centro de Estudios Institucionales	Facilitation between Yale and Univ. Palermo	S -Masters of Law Program estab.; law students and recent graduates more involved in reforms	CEI members attended Yale; modest donor funding