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THE ADMINISTRATION OF JUSTICE PROGRAM
IN LATIN AMERICA AND THE CARIBBEAN



AGENCY FOR INTERNATIONAL DEVELOPMENT
BUREAU FOR LATIN AMERICA
AND THE CARIBBEAN
OFFICE OF DEMOCRATIC INITIATIVES

The Administration of Justice Program in Latin America and the Caribbean

Strategic Objectives of the Program

Throughout Latin America and the Caribbean, the United States Government seeks to support the evolution of stable, participatory democratic societies through its democracy initiative. One pillar of democratic society is commonly felt to be the rule of law. A.I.D.'s LAC Bureau has three program areas which promote the rule of law: (1) justice systems; (2) human rights; and, (3) the legal, regulatory and judicial climate for business. Support to justice systems is more commonly known as the administration of justice (AOJ) program. This paper focuses on AOJ.

In Latin America and the Caribbean, explicit statutory authority has existed since 1985 for programs aimed at the strengthening of the administration of justice. Section 534 of the Foreign Assistance Act of 1961, as amended, describes a broad-reaching program including support for professional training, forensic and investigative capabilities, law reform, enforcement of ethical standards, increasing the availability of legal materials and strengthening respect for the rule of law and internationally recognized human rights.

Historical Context

When the United States first approached Latin American and Caribbean governments about the possibility of assistance aimed at strengthening the administration of justice, we recognized the long-term nature and the breadth of the undertaking, as well as the need for commitment and leadership by individuals and the institutions throughout the region. In most countries of the region, the judiciary was the long-neglected third branch of government. Other parts of the justice system -- justice ministries and prosecutors, the police and prisons -- also had serious problems and potential private sector support groups, such as bar associations and think tanks had little impact.

The objective in the early years was to encourage indigenous reform elements in each country to analyze the problems that existed and develop corrective measures. We hoped to create the momentum for gradual and continuous improvements within and among component institutions, both public and private.

Ten years have now passed. Approximately, \$200 million have been committed to projects throughout the region. Every country in the region with the exception of Suriname and Cuba has participated in some way in these activities ranging from \$55,000 for judicial exchanges with Mexico to a \$35 million, six-year project with Colombia in support of a multi-dimensional restructuring of basic

justice institutions. While there have been problems in implementation, some serious, in general we have succeeded in greatly raising the level of consciousness about justice systems in the region, attracting talent to the solution of the problems and providing relevant technical assistance and training.

Problems Facing Justice Systems

Justice systems in the region continue to suffer, to varying degrees, from a number of problems that result in overburdened courts with enormous case backlogs and exorbitant numbers of prisoners in pre-trial detention. Problems include:

- ✓ Outdated legal codes;
- ✓ Inadequate and poorly trained personnel;
- ✓ Lack of modern or systematic administration including information and record-keeping systems;
- ✓ Insufficient budgets, supplies and facilities;
- ✓ Ineffective criminal investigation and prosecution;
- ✓ Inadequate public defense;
- ✓ Militarized police forces; and,
- ✓ Antiquated and over-crowded prisons.

Program Activities

AOJ programs try to improve the fairness, efficiency, effectiveness and accessibility of justice systems. Programs cover a wide variety of activities including:

- ✓ Training for judges, court personnel, prosecutors and police;
- ✓ Administrative and management reforms;
- ✓ Public and private legal aid for defense purposes;
- ✓ Legal information systems;
- ✓ Law reform including harmonization of legislation and updating of codes;
- ✓ Organizational development of ministries and other justice institutions; and
- ✓ Strengthening of investigative, prosecutorial and forensic entities.

Program Categories

USG assistance is provided by a number of agencies including A.I.D., USIA, and the Department of Justice -- specifically the International Criminal Investigative Training Assistance Program (ICITAP) and the Office of Professional Development and Training (OPDAT). Assistance mechanisms vary including direct assistance to national governments, support for regional institutions such as

ILANUD and, grants to private sector organizations involved with and supportive of judicial reform, both international and national. The various models are described below.

-- Government to Government Institution Building Projects

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|---------------|-----------|
| * Costa Rica | * Panama |
| * El Salvador | * Jamaica |
| * Guatemala | * Peru |
| * Honduras | |

These projects work directly with recipient institutions, principally Supreme Courts but also prosecutors, public defenders and others, to improve their organizational structure and technical capabilities. Court administration and judicial and prosecutorial training are common themes. In some countries, problems have arisen where one individual has been able to monopolize project implementation decisions, prompting us to broaden project structures through the use of justice sector commissions and nongovernmental organizations.

-- Nongovernment Grantee/Consensus Building Projects

- * Fundacion La Ley/Argentina
- * ILANUD/Bolivia (1987-1992)
- * FES/Colombia (1986-1990)
- * CPU/Chile
- * ILANUD/Ecuador
- * Harvard/Guatemala (1987-1990)
- * Instituto de Ciencias Penales/Paraguay
- * UNDP/Uruguay

These projects work through nongovernmental organizations -- foundations, think tanks, or others -- to address important problems that are either not ripe or not capable of treatment on a government-to-government basis. Projects conducted through nongovernmental organizations aim to develop a consensus about the need for reforms and possible solutions of court administration, judicial training and legal representation of the poor.

-- Institution-Building Hybrid Projects

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|--------------------|----------------------|
| * Bolivia (1992) | * El Salvador (1992) |
| * Peru (in design) | * Colombia (1991) |

These projects attempt to combine the dynamism and intellectual continuity of an outside think tank with the decision making authority of government. All major projects are moving in this direction but specifics vary considerably from country to country depending on resource availability and existing relationships between government and non-government entities.

-- Limited Scope Joint Activities

- * Mexico
- * Venezuela
- * Brazil

In some of the larger countries in the region in which it is unlikely that there will be a project of significant size, A.I.D. has joined forces with the Department of Justice and USIA to provide technical assistance and/or training in areas identified by the Embassies. In Mexico, A.I.D. has funded a series of judicial exchanges. In Brazil, American experts in juvenile justice are being funded by A.I.D. and ICITAP to develop a pilot project with the police and social services in the State of Rio de Janeiro. In Venezuela the Department of Justice and Florida International University are supporting the development of a task force to prosecute cases of public corruption.

-- Support to Regional Institutions

- * United Nations Latin American Institute for the Prevention of Crime and the Treatment of the Offender (ILANUD)
- * University of the West Indies
- * Caribbean Law Institute (CLI)

One of the other themes of the administration of justice program has been the development of regional sources of expertise to work with local governments. ILANUD provides training for judges and prosecutors, assists in the development of law libraries and judicial schools, and coordinates research and provides other project management services. The University of the West Indies and CLI are working with the eastern Caribbean countries to harmonize existing legislation and to draft model legislation in areas related to trade, commerce and investment.

-- Support for Professional Networks

- * InterAmerican Bar Foundation (IABF)
- * American Bar Association
- * National Institute for Citizens Education in the Law (NICEL)
- * National Center for State Courts (NCSC)
- * Florida International University (FIU)

In the interest of creating effective international networks at relevant technical and professional levels, A.I.D. has provided grants to a number of US institutions with special interests and capabilities. For example, the IABF has supported bar association activities in Central America and the Andean region and NCSC is planning regional workshops on priority reform topics at which US experts will be put into contact with counterparts throughout the region. NICEL is promoting the establishment of public legal

education in Latin America through several pilot efforts.

Current Trends in Judicial Reform

-- Movement toward Adversarial Criminal Proceedings

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|---------------|-------------|
| * Guatemala | * Bolivia |
| * El Salvador | * Argentina |
| * Ecuador | * Uruguay |
| * Peru | |

There is a growing recognition that the written inquisitorial model led by an investigating judge with a weak public prosecutor is ineffective. Many countries are moving toward an adversarial model that shifts investigative responsibilities to a prosecutor.

-- Updated Civil Procedures

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|-------------|--------------|
| * Uruguay | * Colombia |
| * Peru | * Costa Rica |
| * Argentina | * Ecuador |

Uruguay is the trailblazer in development and implementation of a revised civil procedure code complete with administrative re-organization of the courts. The idea is to accelerate the processing of civil cases by elimination of written procedures that, as in criminal cases, are subject to delay and backlog. It will also improve public accountability and have an impact on the confidence of the private sector in the investment and business climate of the country.

-- Judicial Career and Judicial Schools

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| * Honduras | * Costa Rica |
| * El Salvador | * Uruguay |
| * Panama | * Bolivia |
| * Argentina | * Colombia |
| * Chile | * Peru |

It is widely recognized that the appointment and selection of judges by political rather than merit procedures is detrimental to the integrity and credibility of the judicial system. While the enactment of judicial career legislation is becoming more common, implementation of career mechanisms including better salaries is still a problem. Professionalization of the bench requires mechanisms for training and professional development. Most countries now have Judicial Schools, but the scope of training being offered varies widely from country to country. ILANUD has provided assistance to several countries in this area.

-- Enhanced Role for Management and Administrative Staff

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| * Bolivia | * Colombia |
| * Panama | * Chile |
| * El Salvador | * Costa Rica |

In most countries in the hemisphere, the judge has overall responsibility for the management and administration of the court. Commonly, over 75% of a judges time is spent on administrative matters. This needs to be drastically reduced if there is to be positive impact on the enormous case backlog. The importance of administrative and management personnel is gradually being recognized by judges throughout the region.

-- Alternative Dispute Resolution

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| * Bolivia | * Argentina |
| * Colombia | * Costa Rica (proposed) |

Lack of access, delay and backlog are common characteristics of the judicial systems in the hemisphere. Case load analyses demonstrate that easily resolved and common cases plague the courts. ADR, relying on expedited and informal procedures, attempts to resolve disputes without resort to the formal justice system. Diverting specific types of criminal or civil cases away from the courts allows them to concentrate on serious cases. It is anticipated that the rapid and informal procedures of ADR will increase public satisfaction with the process.

-- Corruption and Judicial Corruption

- * Venezuela

Corruption has been a persistent problem for Latin American countries. A.I.D. has initiated a series of assistance programs directed at strengthening the capability of the financial management arm of governments to increase public accountability and to detect corruption. However, a strong prosecutorial function and ability to investigate and try complicated fraud and/or corruption cases is required. The public is less tolerant of corruption by public officials. Therefore, along with an emphasis on public accountability, there is a need to address issues of ethics within the legal profession and judicial discipline. Transparent mechanisms need to be developed to deal with and confront judicial corruption and incompetence.

-- Corrections

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| * Costa Rica | * Peru |
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Corrections is one of the most troubling areas of the justice system in Latin America. Jails are characterized by disrespect of

human rights and fundamental due process. Length of pre-trial detention is a major issue in several countries including Panama, El Salvador, Honduras. Alternative mechanisms to pre-trial detention and monetary bail should be explored in the absence of significant resources to support prison reform.

Lessons Learned

-- Political Commitment

Success is dependent on host country commitment to reform and their active involvement in program design and implementation. Political support can and should come not only from the government but also from the private sector, through universities, think tanks, bar associations and influential individuals.

-- Local Support/Flexible Approach

Successful AOJ programs maximize the use of local experts and actively seek and adapt to new opportunities. Projects require flexible and politically astute management.

-- Resource Requirements

Given the historic neglect, judicial systems cannot absorb large sums of dollars quickly. There is a tendency on the part of beneficiaries to request money for high tech equipment that by itself cannot improve the functioning of the institution. Programs need to focus on increasing the capacity of the justice sector institutions to govern themselves.