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Strengthening Democratic Institutions in Uruguay and Argentina

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Summary

In broad terms, Uruguay and Argentina share a similar recent history: insurgency followed by military takeover followed by transition to democratic rule. But there the similarities end. Uruguay has a long and nearly uninterrupted history of stable social democracy. Argentina, by contrast, has been marked by turbulent shifts between caudillos and democratically elected, but authoritarian, civilian rulers.

The differences have instructed USAID's approach to helping bolster the rule of law in each country. In Uruguay a broad consensus existed for improving the country's legal system. With such agreement in place, USAID's task was to encourage and facilitate changes planned or already under way. Activities included judges' training, administrative reform, and alternative dispute resolution (seeking options, in legal cases, to formal court proceedings).

In Argentina, there was no such consensus. After a fruitless attempt at aiding the nation's Supreme Court system, the USAID Office in Montevideo shifted its efforts to the more basic task of building constituencies and coalitions for judicial change at the national level. In this effort USAID found a large, vigorous, and well-educated middle class interested in learning about institutional problems and eager to see them solved.

USAID also found a receptive audience at the provincial-court level. Working with the Supreme Court of the Province of Buenos Aires, the Agency made measurable progress in activities similar to those it undertook in Uruguay. It supported the training of public defenders, helped install systems for alternative dispute resolution, and assisted in decentralizing and streamlining the court system.

In 1993 a team from USAID's Center for Development Evaluation and Information (CDIE) conducted an evaluation of the Agency's rule-of-law program in Uruguay and Argentina. The team drew several conclusions that may have relevance to rule-of-law programs in other countries. Among them:

An elite consensus for reform is essential before real change can take place. In Uruguay and in Buenos Aires Province, such consensus existed, and reform went apace. In the Argentine national court system, the consensus was absent, and efforts failed.

A high level of socioeconomic development can help set the stage for change. In Argentina, a free and vigorous media, a high rate of literacy, a diverse commercial sector, and an active and professional civil society have allowed USAID to work extensively in mobilizing popular demand for reform. Although such reform has not yet come about (at the national level), the public wants it. Polls show 60 percent of Argentines to be disenchanted with state institutions; a full 80 percent prefer reform as a remedy to the nation's ills over revolution or military rule.

USAID can serve effectively as a pioneer in rule-of-law activities, laying the groundwork for donors that follow.

Background

To summarize the political histories of Uruguay and Argentina is to contrast differences rather than to compare similarities. True, over the past 10 years political events in the two countries have followed roughly parallel paths: insurgency in the 1970s, then a military coup, and in the early 1980s a transition back to democracy. But in fact Argentina and Uruguay are more a study of opposites, even within these events, than one of similarities.

South America's "Switzerland," Uruguay had a long and largely successful history of social democracy. However, rumors of state corruption and a growing disaffection with the political monopoly of the country's two political parties led, in the 1970s, to public alienation. The alienation spawned an urban insurgency group, the Tupamaros. Nervous over growing subversion, civilian leaders granted increasing powers to the military. In 1976 the military staged a coup. The junta suspended political and civil rights. It even engaged in torture and "disappearances."

The country was restored to democracy in 1985. After losing a plebiscite, the military grudgingly agreed to step aside and permit the election of a civil president. Since then, Uruguay has returned to its precoup tranquillity, with civil and political liberties restored to the people. Throughout the turmoil, and indeed throughout Uruguay's history, the judicial system has remained stable, independent, and free of politicization.

Argentina presents a kind of mirror image. Whereas Uruguay's tradition is one of harmonious, nearly continuous democracy, Argentina has endured a cycle of unstable democracies and military coups since 1930. What has been described as praetorian conflict marks its two main political parties, and that conflict undermines stability. Moreover, the Argentine judicial system has been stained by politicization and subservience to the executive branch.

The latest change in government came in 1983. Argentina returned to democratic governance after 6 years of military rule. Since the transition, economic woes have dominated Argentina's politics. A stagnant gross domestic product, a towering foreign debt, and galloping inflation—all were inherited from the junta by the administration of President Raúl Alfonsín of the Radical Party. The subsequent president, the Peronista Carlos Menem, has grappled with the problems by attempting to dismantle state intervention in the economy. His policy has produced positive results, but at a political cost. Most legislation comes now by executive decree; when the Supreme Court expressed opposition to Menem's policies, he packed it with political allies.

USAID's Approach

In both Uruguay and Argentina the amount provided for legal-system assistance has been small. It has never gone above \$90,000 for one activity; in some cases it has been as little as \$25,000. What accounts for the successes is the targets of opportunity present in each country and the freedom that project managers had to be flexible in their aim. There was no coherent project in place in either country, so managers could direct money to where it would do the most good. But how, in the first place, does one go about reforming a nation's legal system? USAID has identified four strategies to meet four essential needs. They are, in sequence,

Building constituencies and coalitions when host-country political leadership in support of legal development is weak. The aim is to forge political and public pressure for reform.

Advancing structural reform when structures within the legal system are weak. Structural reform seeks to bring about progressive change in constitutional and other laws.

Creating access mechanisms when people are, in effect, excluded from the legal system. Efforts include providing legal aid, strengthening public defender staff, and introducing vehicles for alternative dispute resolution.

Strengthening the legal system when institutional capacity is inadequate. This is a nuts-and-bolts strategy: improving record keeping; designing training programs for judges, staff, and lawyers; acquiring modern technology such as computers for case tracking.

Conditions within the two countries varied, and so did the strategies for supporting rule of law. In Uruguay a consensus already existed among political and judicial elites over the desirability of reform. In fact, the judiciary had initiated a major series of structural reforms in the courts. Thus USAID concentrated its efforts on bolstering many of the reforms already begun from within the judiciary, mainly in activities to strengthen the legal system.

In Argentina no such consensus existed. USAID started out with efforts to strengthen the national court system. They did not fare well, however. The USAID Office in Montevideo then shifted its efforts to the more elementary task of constituency and coalition building, and to strengthening the provincial courts.

Findings

USAID-supported initiatives within Uruguay and Argentina embrace a wide-ranging mix of small activities. The discussion that follows therefore does not analyze each activity in great detail. Rather, it provides an overall picture of the four strategies and how they have affected the climate for administration of justice.

Constituency- and Coalition-Building Strategies

In Argentina, USAID-supported activities in constituency and coalition building fall into three categories: nongovernmental organizations (NGOs), public polls, and the commercial sector. As to the first category, NGOs, USAID has supported a number of such organizations to build a demand for change. Among them:

Fundación La Ley (The Law Foundation). This is a nonprofit organization formed by La Ley, a legal publishing house in Buenos Aires. The Law Foundation has substantial contacts in the legal system. Its predominant role is to administer USAID grants, but it also runs its own separate project to form a National Center of Provincial Courts. The center will promote exchange of information among the courts.

Poder Ciudadano (Citizen Power). Formed as a civic-action group, Citizen Power works extensively with the media to direct public attention to corruption. It targets younger generation Argentines through the schools and the media to convey its message of civic participation and government integrity.

Conciencia (Conscience). Stressing civic participation and education, Conscience aims at creating a more responsible citizenry and responsive government. The organization also has provided technical assistance to the Supreme Court of the Province of Buenos Aires for a program of legal literacy and civic education in the judicial system.

USAID has also supported public-opinion surveys. Public opinion is becoming an important factor in affecting the behavior of political elites in Argentina. Polling has emerged as something of a boom industry; Buenos Aires now counts five major polling organizations covering the country. By all accounts political leaders keep a close eye on polls.

The political effects of polling come through two main sources. First is the press. In the first democratic elections after the military government in 1983, only one major newspaper (among 15 in greater Buenos Aires alone) regularly published preelection polls. By 1985 all newspapers were regularly printing opinion polls. Today, almost every day, one of the newspapers will publish a recent poll on some topic, from the political concerns of voters to the favorite pastimes of Argentines. Overall, the media in Argentina have emerged as strong, free, active voices in the country's political life.

The second channel of influence has been political parties. It is a common practice now for parties to hire pollsters. Political leaders use the polls to read public opinion and to test popular responses to possible policy changes.

(At least one poll bears mentioning. Surveys conducted by the University of Michigan found 60 percent of Argentines disenchanted with current state institutions. The same poll, however, found a full 80 percent of citizens to favor reform as a remedy over revolution or rule by junta.)

Another voice for change comes from the commercial sector. Interviews, polls, and the activities of business associations show this sector to be a viable and active constituency for legal and judicial reform. For example, the USAID-supported Foundation for State Modernization, an association of 80 private businesses, asked managers what they considered the most important

legal-system issues. The responses mirrored concerns about fundamentals. As key concerns, the managers pointed to (1) inefficiency of the judiciary, (2) the need for the state to commit greater resources to the justice system, and (3) politicization of the courts. “Everything needs to be changed,” said one respondent, “especially the Supreme Court.”

Another business organization, Instituto para el Desarrollo de Empresarios en la Argentina (Institute for the Development of Entrepreneurs) zeroed in on specific problems with the justice system. At the top of its list were (1) delays in the administration of justice, (2) high costs of litigation, and (3) organizational and management inefficiencies.

Structural Reform Strategies

The governments of both Uruguay and Argentina began structural reforms before USAID involvement, and the reforms proceeded under their own steam. In Uruguay the government in 1988 switched from traditional written procedures to an oral procedure for noncriminal cases. To ease the change, the government expanded the judiciary by more than 100 new judges—an increase of one third.

In Argentina reforms consisted primarily of adoption of oral procedures in the federal criminal court system. (Unlike Uruguay, the change was not accompanied by an addition of judges.) Reform also included creation of a committee to nominate candidates to the president for judicial appointment.

In neither country have the oral proceedings speeded up the court system. In fact, the change has measurably *slowed* case processing. (In Argentina, oral courts showed a case backlog seven times greater than conventional courts; in Uruguay the difference is marginal.) However, oral procedures do have obvious benefits. For one thing, face-to-face contact between the accused, witnesses, and judges allows for greater clarification of testimony, issues, and evidence. For another, oral proceedings give citizens an opportunity to better comprehend the legal process. The backlog may wane as judges gain more experience; in any event, faster justice is not necessarily better justice.

Argentina’s judicial nominating committee has not lived up to expectations. The politics that surrounds the justice system has caught up with it and, in effect, swallowed it. The committee is dominated by people close to the president; nonetheless, he has accepted only about a fifth of the committee’s recommendations.

Access Creation Strategies

In Uruguay the poor have good access to the legal system. The commercial sector, however, is underserved. USAID has therefore concentrated on access of the commercial sector to a fair and speedy trial. As it is, 7 or 8 months pass before a decision is reached in a typical commercial case—a significant duration for private businesses. In addition, many businessmen do not trust the legal system. They see judges as leaning toward the worker in business–labor disputes.

(According to one lawyer, 86 percent of the business–labor disputes he handled one year were decided in favor of the worker.)

To encourage alternative ways of resolving disputes, USAID is sponsoring a series of courses on mediation for lawyers. The training project aims at taking mediation out of the hands of judges and placing it in the hands of lawyers. In the view of the project manager, lawyers are the more logical choice as mediators. The training emphasizes arbitration, mediation, and commercial and labor negotiation. Actual resolution of such cases will take place outside of the courts, probably in the Labor Ministry or in business offices.

In Argentina USAID has devoted its assistance to three areas: four pilot projects in legal aid/mediation, training of public defenders, and expansion of alternative dispute resolution in the federal courts. The first of these, the four legal aid/mediation centers, all are located in working-class and lower-middle-class neighborhoods in greater Buenos Aires. Each center employs a team of recent law-school graduates who each receive a \$15-a-day stipend (paid for by USAID). The centers, coordinated by an experienced attorney, fall under the direction of the Ministry of Justice.

Mediated agreements have the force of law; if one party fails to comply, an agreement can be enforced in court. In 1992–93 the centers reviewed 1,938 cases and resolved 1,060 of them. Family disputes, the largest category, made up 19 percent of the cases. Labor cases came next (16 percent), followed by property disputes (11 percent) and neighborhood disputes (10 percent). Sixty-two percent of the centers' clients were female.

The centers seem to have upper level support in Argentina's politically charged judicial system. The government wishes to expand the program. It appears, however, that not many people are aware of the centers that already exist. Clients learn about them mainly through word of mouth. Advertising could help publicize the centers, but the present minister of justice wants the program to keep a low profile for the immediate future to ensure that demands for services do not exceed existing capacity.

As for the training of public defenders, USAID has supported this activity almost from the start of its program in Argentina. The Agency works through Foro de Estudios Sobre la Administración de Justicia (Forum for Studies on the Administration of Justice—FORES), a Buenos Aires–based NGO involved in issues concerning public defenders. Much of FORES's effort goes into training public defenders in Buenos Aires Province and the federal capital, where there is the greatest need. Through correspondence, FORES also conducts long-distance training in outlying provinces.

In alternative dispute resolution, USAID supports two activities. They are a 10-court pilot mediation program with the Ministry of Justice and a smaller program to train judges in Buenos Aires Province in mediation techniques. The projects aim at unclogging the courts and providing more timely access to justice.

Mediation has the support of the executive branch. That branch issued a decree to integrate mediation into the courts, and it created a Mediation Corps and a Mediation Commission under

the Ministry of Justice. The commission works with provincial authorities, conducting 12- to 16-hour mediation workshops. So far, mediation has been better received at the provincial level than the federal. Provincial judges are more likely to know personally the people involved in a litigation, and mediation becomes a less threatening process for both the judge and the contestants. By contrast, federal judges seem to fear mediation will erode their power and position. USAID's 10-court pilot project seeks, through example, to alleviate that fear.

Legal System Strengthening Strategies

With relatively little funding, USAID has played a dynamic role in bolstering the legal systems in Uruguay and Argentina. In Argentina success came at the provincial level. There was a marked lack of enthusiasm for reform at the national Supreme Court level.

USAID'S initial efforts in Argentina aimed at the national level. They consisted mainly of three activities:

A judicial school to offer training to judges and court administrators.

An in-depth analysis of the federal courts to recommend reforms to improve the system.

A judicial studies center to serve as a research facilitator and networking mechanism for provincial courts.

None of these endeavors has enjoyed much success. Political machinations from outside the Supreme Court and personal squabbling within it have scuttled the school. The analyses were conducted, and they pointed out serious administrative problems in the national legal system. (The analysts found, for example, that only 6 percent of the decisions taken by Supreme Court justices involve judicial matters; the remainder concern administrative management.) The court, however, has neglected to address those problems. The judicial studies center has been initiated, but its agenda thus far has been empty.

Given the intractability of the national Supreme Court, the Agency shifted its attention to the Supreme Court of the Province of Buenos Aires. The Agency found the provincial court to be much more responsive than its national-level counterpart. USAID has helped the court

Plan for a judicial school (now being set up)

Offer extension short courses on special topics for judges and other court personnel in such fields as mediation techniques

Set up a computerized registration system for expert witnesses

Begin an administrative decentralization process, transferring much of the court management burden (such things as budgeting and personnel administration) to lower courts

Initiate a court information system to guide citizens through the court to the office they need to find

The USAID investment is modest. Over 5 years Agency support has totaled just over \$150,000. Cumulatively, however, these small activities show that initiatives to strengthen the Argentine legal system are workable.

In Uruguay legal system strengthening takes two forms:

Training. USAID supports the Center for Juridical Studies. The center trains judges, attorneys, and court clerks in such fields as oral procedures, commercial law, and court administration.

Administrative reform. USAID has helped to fund the creation of an office of administrative services in the Supreme Court. It concentrates on reduction of the administrative workload, consolidation of planning and budgeting, development of a system of judicial statistics, and development of a management information system.

The Center for Juridical Studies has markedly changed, in a favorable way, the way citizens look at Uruguay's judicial system. Before the center became established, formal complaints about the way judges were applying the law numbered 60 to 70 a year. In 1993, after workshops began and most judges had been trained, the number of complaints dropped to two or three.

The center's existence has also affected the internal appointment and promotion of judges. The Supreme Court has begun a de facto policy of making participation in the center a primary criterion for advancement in the judicial system. Currently, out of a total of 450 judges and prosecuting attorneys in the Uruguayan court system, 321 have taken part in studies at the Juridical Center.

Administrative reforms, too, have produced impressive results. For one thing, the administrative burden on judges has been reduced. All administrative matters have been delegated to a director of administration. Before that action, administrative decisions were made by the Supreme Court itself. Now the judges are free of that work. For another thing, the project has streamlined data gathering by establishing a statistical office. Data collected by the office will produce indicators (such as court congestion and case duration) that monitor court performance.

Lessons Learned

The CDIE examination of rule-of-law programs in Uruguay and Argentina actually consisted of three separate case studies: the Argentine National Supreme Court system, the Buenos Aires Supreme Court system, and the Uruguayan Supreme Court system. In this way the team was able to review contrasts and similarities between the cases. That allowed the members to draw conclusions that may be more far reaching than would have been the case with a single study.

First is the *importance of elite willingness to address deficiencies in the justice system*. The contrasting cases of the Argentine National Supreme Court, on the one hand, and the Buenos Aires provincial courts and the Uruguayan Supreme Court, on the other, point to the importance of *which* elites hold sway over the judicial system. In the Argentine national system, the judiciary falls largely under the influence of the executive. In the province of Buenos Aires and in Uruguay, the judiciaries themselves were able to undertake reforms.

Second, *structural reforms may provide a unique moment in a country's legal history to help the country improve, in a significant way, its overall judicial system*. Successful structural reform depends on consensus for change in the upper reaches of a court system. When the two factors are in sync, donors are presented with a promising opportunity to bring about useful change. In Uruguay, for example, judicial will resulted in formation of the Center for Juridical Studies. The center presented a large window of opportunity for USAID to help improve Uruguay's court system.

Third, *where a coherent elite coalition for reform exists, getting to where the courts wish to go may require only a slight push*. In both Uruguay and Buenos Aires Province, upper level court officials welcomed moves to improve the court system. That allowed USAID to provide the means to address the concerns and issues that the elite identified. The donor role becomes one of supporting the interests of the reform-minded coalition. In such instances the symbolic support of the funds that donors provide may be worth more than the actual dollar value.

Fourth, *it is critical to hold the state accountable for continuous enforcement of agreed-to reforms*. This point was demonstrated in USAID's experience with the Argentine Supreme Court, in which in-depth studies pointing out administrative problems were essentially ignored by the court. The absence of court-initiated changes highlights the importance of constituency-building strategies in mobilizing outside pressures for judiciary improvements.

Fifth, although the Argentine Supreme Court has not shown much progress, *the ability of USAID to refocus its efforts successfully on constituency building was due to the country's socioeconomic development*. The convergence of high literacy rates, a free and vigorous media, a large middle class, and extensive public polling provided a fertile environment for sowing the seeds of reform. It is significant that the overwhelming majority of Argentines prefer reform over revolution to solve the country's institutional problems.

Sixth, *USAID can serve effectively in a pioneering capacity in developing rule of law*. In Uruguay USAID's activities have attracted the interest of both the United Nations Development Program and the Inter-American Development Bank. Both say that USAID's trailblazing work in Uruguay led to their involvement.

The Agency's support for reform constituencies in Argentina may also have helped, indirectly, to lay the political foundation for World Bank intervention. The Bank has expressed interest in carrying out several activities begun by USAID when the Agency phases out its operations in Argentina.

This Evaluation Highlights was prepared for the Center for Development Information and Evaluation by Ross Bankson of Conwal Incorporated. It summarizes the findings from the forthcoming A Strategic Assessment of Legal Systems Development in Uruguay and Argentina, by Harry Blair and Gary Hansen. Documents can be ordered from the DISC, 1611 North Kent Street, Suite 200, Arlington VA 22209-2111, Telephone (703) 351-4006, Fax (703) 351-4039.