

# Judicial Reform: A Process of Change Through Pilot Courts

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## A. Introduction

Many developing countries are giving priority to judicial reform as a necessary element in promoting investment. Governments across Eastern Europe and Latin America realize that their economic reforms will not be complete until there is a corresponding change in laws and legal processes. The adoption of reforms varies across regions – some Eastern European countries included the judiciary as part of their initial public sector reforms, while Latin America has left the judiciary for last. The Latin American path sets changes in the judiciary as part of the second generation of reforms focusing on institutional strengthening. Reformers in both regions share four core goals: each country aims to have an impartial, predictable,<sup>1</sup> accessible, and efficient judicial system.

The pressure on governments to reform comes from both local and foreign interests. At the national level, privatization of large state enterprises has raised issues in contracts, labour, and competition that the judiciaries were ill-equipped to handle. Further, as democracies stabilize, public opinion has begun to play a larger role in decision making, and public dissatisfaction with the judiciary runs high in many countries. At the international level, economic integration also pushes countries to change laws and legal processes.<sup>2</sup> Not only is there greater pressure for efficient law enforcement, but countries have to rewrite legislation to conform to

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<sup>1</sup> 'The prediction of the incidence of the public force through the instrumentality of the courts', Oliver Wendell Holmes, Jr. as cited in Andrew J. Wistrich, 'Why Judges Do What They Do' in (September–October 1998) 82 *Judicature* 2 at p. 88.

<sup>2</sup> Carlos Maria Regunaga sounds a call for an international commercial court for matters pertaining to Mercosur. Otherwise, the interpretation of the same law may vary from country to country. Regunaga, 'Seguridad Juridica in Mercosur?' Comments, p. 27.

regional and international standards,<sup>3</sup> and some even have to establish new institutions.<sup>4</sup> In addition, when countries join international (trade) organizations such as the WTO or EU, they must comply with certain legal prerequisites, and they come under pressure to allow foreign institutions to review their administration of laws.<sup>5</sup> Finally, as countries try to make themselves more attractive to foreign investment, they find that an inefficient judiciary may repel potential investors. One factor that investors weigh in rating a country is whether they will have access to appropriate dispute resolution mechanisms. For example, in a recent poll over 90 per cent of businesses cited delay as the main problem of the judiciary in Brazil.<sup>6</sup> In this same poll, 66 per cent stated that judicial uncertainties directly harmed their businesses.<sup>7</sup>

## **B. Judicial Reform**

The judicial sector in many countries is inefficient and distrusted. In Hungary, 55 per cent of the judges were appointed before 1989 under the old system causing problems. They now have to learn about the quickly reforming legislation. Even those newly appointed have these problems. Since education was slow, they were in need of additional training from the start.<sup>8</sup> While in Hungary the majority of individual judges are respected for being impartial and fair,<sup>9</sup> one complaint is that judges are often inexperienced, which calls into question the proper administration

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<sup>3</sup> Maria Dakolias, *The Judicial Sector in Latin America and the Caribbean: Elements of Reform*, World Bank Technical Paper no. 319, 1997, at p. 3.

<sup>4</sup> FBIS 25 December 1996, 'Official Views State of Judicial Reform', Ukraine joined the Council of Europe, which obliged it to bring its legislation into conformity with European human rights standards and establish new institutions.

<sup>5</sup> See H.M. Arturo Hoyos, 'El Organo Judicial ante los desafios del Siglo XXI' (The Judicial Organ before the Challenges of the 21st Century), 'El Organo Judicial en Democracia' (The Judicial Organ in Democracy), Panama Supreme Court 1994. See also Carlos Maria Regunaga, 'Seguridad Juridica in Mercosur', (November 1996) 78 *Comments on Argentine Trade*, no. 4.

<sup>6</sup> Armando Castelar Pinheiro, 'The Judiciary and the Economy: Estimates for Brazil', April 1998, p. 2

<sup>7</sup> Ibid.

<sup>8</sup> The increase of the volume of business transactions proved difficult for judges because they involve complex issues. In addition, judges had been trained in the past to promote state interests, *Social Role of the Legal Profession*, Kahei Rokumoto (ed.), International Center for Comparative Law and Politics, Faculty of Law, the University of Tokyo, Japan, Proceedings of the International Colloquium of the International Association of Legal Science, September 1991, p. 133.

<sup>9</sup> *Nations in Transit* p. 185.

of justice in general.<sup>10</sup> At the same time, there has been tremendous pressure, as the number of cases filed in one Hungarian court increased by over 500 per cent in the period 1990–96.<sup>11</sup>

While many countries are responding to the calls for judicial reform, modernization cannot be completed in one five-year project. Reform requires both cultural change and a systematic change in the delivery of justice,<sup>12</sup> and countries need to develop a programme of stages for the reform process.<sup>13</sup> Such programmes must include, among other things, court modernization, legal reform, increasing alternative dispute resolution mechanisms, training for judges, court personnel, lawyers, students and civil society, and improving access to justice. The starting point should be a clear plan that focuses on activities that have a high probability of success and provide immediate benefits. This would help to win over both judges and political actors who have a vested interest in the inefficiency of the judiciary.

### C. Why Pilots Courts?

One way to begin the process is a pilot programme of court modernization. Since courts often have limited experience in reform processes, pilot courts can help the judiciary develop fundamental tools to manage projects, implement reform and serve as the basis for much larger efforts. They can identify and create leaders, foster a teamwork environment, and train personnel who can carry the judiciary into future projects.<sup>14</sup>

Pilot projects allow courts to focus on specific issues, which very often begin with an organizational and efficiency orientation, and to define realistic goals, which can be tested.<sup>15</sup> They allow the judiciary to estimate the future costs of reforms, the time

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<sup>10</sup> *The World Competitiveness Yearbook 1998* (World Economic Forum, Lausanne, 1998) ranked Hungary 28th among 46 countries whose public do not have confidence in the fair administration of justice.

<sup>11</sup> The clearance rate is the ratio of cases disposed as a percentage of cases filed. These statistics are from the first instance civil courts in the District Court of Budapest. See World Bank Judicial Indicators Database, and also Maria Dakolias, *Court Performance: An International Perspective*, forthcoming in 1999.

<sup>12</sup> See John Henry Merryman, David S. Clark, and Lawrence M. Friedman, *Law and Social Change in Mediterranean Europe and Latin America: A Handbook of Legal and Social Indicators for Comparative Study* (Stanford Studies in Law and Development, 1979).

<sup>13</sup> See Buscaglia and Dakolias, *Judicial Reform: The Experience in Ecuador and Argentina*, World Bank Technical Paper 350 (1996).

<sup>14</sup> Somerlot, *Judges' Journal* at p. 6. It is noted that programmes that succeeded involved very strong judicial leadership.

<sup>15</sup> A single computer made the Juzgado 23 Civil del Circuito de Bogota more efficient by reducing pending case loads and speeding up filing processes. The computer paid for itself in one year. (p. 13). Evaluacion del logro en el juzgado 23 civil del circuito de Bogota, como resultado de la sistematizacion. Instituto Ser de Investigacion, 1986 (unpublished report on file with authors).

needed to implement them, and to define the main obstacles to further reform. In addition, the pilot projects help to create models of organization and systems that promote greater efficiency and effectiveness that can be tested and evaluated.

Further, pilot projects can be a good way to test a reform before it is imposed on a national level.<sup>16</sup> By testing regulations in this way, legislators and administrators can avoid the steep economic and political costs of revision or repeal. In this way, pilot projects can test new procedures without implementing legislative changes during the pilot period. A mediation project in Argentina, for example, began in the capital city, where there was an agreement reached in over 60 per cent of the cases in the federal court.<sup>17</sup> Now, after evaluation and revision, it will be expanded to the rest of the country's federal courts.

One of the necessary elements of judicial reform is consensus, and building that consensus is often one of the first stages of the programme. Without consensus obstacles to reform may be overwhelming. Pilot courts lend themselves to the first stages of the judicial reform process because they can help to communicate a vision of the change process. Further, the experience of the pilot helps judiciaries look beyond their vested interest to work in groups and to reach consensus.<sup>18</sup> They help reformers avoid setting unattainable goals, and reduce the risk of failure and loss of valuable resources. This process generates ownership of the reforms, and develops a political and social commitment for change that makes reforms difficult to reverse. This article will highlight examples of pilot courts in Eastern Europe and the Americas, and discuss some of the lessons learned from them.

## **D. A Process of Change: Leadership and Management**

A pilot project does not make sense if there are no long-term objectives. In general these objectives should be related to the overall judicial reform programme. Pilot projects, in this way, build knowledge and prepare the way for more profound reforms. The main elements of the knowledge needed can be classified as leadership and management. Management is a set of processes that keep a complicated system of people and technology running smoothly.<sup>19</sup> This includes planning, budgeting, organization, staffing, problem solving, training, automation, case flow management, and redesign of processes as well as others. Leadership is a set of processes that

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<sup>16</sup> Under the pilot programme in the United States, the pilot courts were used to make recommendations to Congress that would serve as the basis for changes made in all federal district courts. Steinstra, *Judges' Journal* at p. 17.

<sup>17</sup> Maria Dakolias, 'El sector judicial en América Latina y el Caribe: Elementos de reforma', Documento Técnico del Banco Mundial no. 319S, 1997, at p. 48.

<sup>18</sup> Steinstra, *Judges' Journal*, p. 19.

<sup>19</sup> John P. Kotter, *Leading Change* (Harvard Business School Press, September 1996) at p. 25

create new organizations or adapt existing organizations to changing circumstances. Leadership defines what the future should look like, align the people with that vision and inspire them to achieve it despite the obstacles.<sup>20</sup>

Some authors argue that successful reforms are due to 90 per cent leadership and 10 per cent management. This requires a change in attitudes. Judiciaries, due to their traditional culture, are often not accustomed to change and seldom initiate reform.<sup>21</sup> In one pilot court, the judges were reluctant at the start, but later came to embrace the programme and assured its success through their strong support.<sup>22</sup>

To change these attitudes, participation of the main actors in the change process, during the first stages, has become a powerful tool to reach commitment. Total Quality Management (TQM), the most participatory management tool, has become an effective way to begin the reform and innovation process.<sup>23</sup> Each pilot project presented in this article is based on the concept of TQM. Most of the pilot courts have used TQM tools to strengthen and support their internal capacity for leadership, cultural change, short-term benefits, communication of the vision and creation of the learning process.

## **E. Participation**

Participation is a key ingredient in the process of change and, due to their smaller, local scale, pilot projects are particularly well suited to foster participation. Groups that should have a voice in the process include the higher and lower courts, the legislative and the executive branches of government, non-governmental organizations, citizen groups, law schools, bar associations, judicial associations, business groups, and other stakeholders in the reform process. However, the judiciary may exhibit sensitivities in encouraging the participation process because of fear of criticism and perhaps even inexperience in dealing with these different stakeholders. The judiciary may sometimes not be aware that stakeholders outside the judiciary exist; this is one of the hardest stages of cultural change.

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<sup>20</sup> Ibid. at p. 25.

<sup>21</sup> One study shows that the majority of judges resist change and working in committees. However, women judges are challenged by leading change while male judges are resistant to change. John W. Kennedy Jr. 'Personality Type and Judicial Decision Making' in (Summer 1998) 37 *The Judges' Journal* 3 at pp. 6–7. Perhaps the pilot project in Chiclayo Peru supports this argument since five women judges were responsible.

<sup>22</sup> Ninety five per cent of the judges in the California state pilot project came to support judicial control of the pace of litigation. Half the judges changed their opinion about delay reduction after the programme. Somerlot, *Judges' Journal* p. 7

<sup>23</sup> The fundamental concepts of TQM are team work, participation, suggestion system, customer orientation (quality service), performance indicators, standardization, delegation, and statistical process control.

Participation by the general public is important. One pilot project found that public input raised important issues that judges and lawyers would not otherwise have noticed.<sup>24</sup> Some countries have large minority groups that may have special access issues and usually have complaints about the judiciary. Other issues that the public can help appraise are access to justice and faith in the system. A study reflecting greater participation yields a more complete map of the main problems in the system. Widespread participation also has the advantage that it engenders a feeling of ownership and enthusiasm for those involved. Such a spirit is crucial, particularly for long-term reforms, which can be difficult, time consuming, and politically costly. Participation of judges is crucial to the process. In the United States, a review of a six-court pilot programme showed that one reason the programme had not been as successful as others was because no active federal judge had taken part in the planning stages of the reform.<sup>25</sup>

Another way to foster participation is to make the reform programme voluntary.<sup>26</sup> This method tends to encourage those judges interested and also encourages further experimentation among other courts: if a few courts experiment and are successful others may choose to follow. Finally, participation will also be greater if higher courts encourage lower courts to initiate experiments. This provides the basis for innovation. One way to achieve this is through a court resolution explicitly permitting pilot programmes. In this way, lower courts are not discouraged if a law must be changed before undertaking a pilot project.

## **F. Pilot Courts Around The World**

While pilot methods vary from country to country, they share several characteristics that make them useful tools for judicial reform. They permit experimentation, and are instructive for those who want to implement other, related reforms. International exchange of pilot project experiences, for example, can be useful in generating ideas for further reforms. Although reformers must be sensitive to the cultural and structural differences between countries, the exchange of experiences can also help to build support for the pilot projects, create working relationships among judiciaries, and legitimize the reform process.

Even within a country, pilot projects provide fertile learning ground. In the

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<sup>24</sup> D. Brock Hornby, 'Recent Judicial Conference Recommendations for Achieving Cost and Delay Reduction in the Federal Courts' in (Spring 1988) *37 Judges' Journal* 2, American Bar Association, at p. 13.

<sup>25</sup> Douglas K. Somerlot and Barry Mohoney, 'What are the Lessons of Civil Justice Reform? Rethinking Brookings, the CJRA, RAND, and State Initiatives', *Getting a Handle on Civil Justice Reform* in (Spring 1988) *37 Judges' Journal* 2, American Bar Association, at p. 5.

<sup>26</sup> Experience shows that both designation and voluntary participation can be successful.

United States, for example, one pilot project set certain specific goals – reducing cost and delay, creating uniform case management, establishing judicial control of cases, and making judges accountable for their cases – but allowed each participating court to choose how it would attain those goals.<sup>27</sup> The result was a rich diversity of solutions: one court designed a case-tracking system, another created an early assessment programme, and another scheduled ‘settlement weeks’, in which courts focused on mediating cases deemed ready for settlement discussions.<sup>28</sup> In Ecuador there is a similar scheme for courts to develop their own reform programme and apply for financial aid for the implementation. Subsequent reformers will thus have a greater array of solutions to study and choose from.

### ***I. Colombia***

In Colombia, the municipality launched its first pilot court reform project in 1989. Colombia is a country faced with extreme violence, which has undermined the system of justice.<sup>29</sup> Military and paramilitary death squads have placed pressure on the government to act outside its official mandate.<sup>30</sup> The Colombian judicial system suffers from inefficiency and low public confidence in the judiciary. Colombia ranked 45 out of 46 countries in a study of public confidence in the fair administration of justice.<sup>31</sup> Many writers have deemed the 1991 general court reforms a failure since, six years later, courts are less productive than before the reforms.<sup>32</sup>

While an efficient and effective judiciary would be crucial in such an environment, instead there is a 99 per cent impunity rate and a constant threat of violence against the judiciary itself. The local business guild initiated the Itagüí pilot after conducting a study that revealed that 61.2 per cent of the Itagüí community had no confidence in the judicial system, and 85 per cent did not bother to report violations of the law. The pilot project experience in Colombia is an example of an effort to improve

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<sup>27</sup> Donna Siembra, ‘Judicial Perceptions of DCM and ADR in Five Court Demonstration Programs Under the CJRA’, *Getting a Handle on Civil Justice Reform in (Spring 1988) 37 Judges’ Journal* 2, American Bar Association, at p. 18.

<sup>28</sup> These programmes were created by different Federal Courts in the United States. *Judges’ Journal*, p. 18.

<sup>29</sup> It is estimated that in 1995 only 26 per cent of the crimes were brought to the justice system. Viva la Ciudadania Corporacion S.O.S., *Colombia Proyecto Comision Nacional Contra La Impunidad*, September 1997.

<sup>30</sup> Kim Thachuck, *Politics, Corruption and Drug Policy in Colombia*, Simon Fraser University, September 1997 at p. 81.

<sup>31</sup> The survey results show that Venezuela is the worst justice system in the world. *The World Competitiveness Yearbook 1998*, World Economic Forum, Lausanne 1998. Even the judicial employees are unsatisfied with the system *see* FBIS, 30 September 1997 ‘Government Threatens Judiciary Strikers with Dismissal’.

<sup>32</sup> *Ibid.* at p. 3. *See also* J. Giraldo Angel ‘El Fracaso de la Reforma Constitucional de la Justicia: Coyuntura Social’ Instituto SER – Fedesarrollo, 1996.

confidence in a system that desperately needs some form of dispute resolution that works.<sup>33</sup> This pilot is an example of co-operation between the individual court and its community, and a clear example of a cultural change in the judiciary that has yielded positive results.

The goal was for courts at first instance to adopt modern administration techniques to increase productivity, improve the quality of service, and restore confidence in the judiciary. Eleven courts volunteered to participate in the programme which entailed two main phases. First, the design of the proposal, which was presented to the judges of Itagüí by the business association and a non-profit group. The proposal focused on reorganizing court administration, creating working groups to implement the changes, and developing a financial strategy. Once the judges approved the plan, phase two, the implementation of the changes, began. In broad strokes, the plan proposed centralizing the administrative work of the 11 courts in one office, allowing judges to focus principally on judicial tasks. This office was to be managed using modern organizational techniques, with efficiency, quality of service, and continual improvement as top priorities. At the same time, the courts would improve their public image through community outreach and other communications strategies.

So far, the project has been a success. In 1991, plaintiffs filed 3,400 cases, but judges resolved only 2,200 cases (65 per cent). In 1997, plaintiffs filed 6,700 cases, an increase of almost 100 per cent, while judges resolved 5,400 cases, or 81 per cent. Thus, the Judiciary improved its productivity even though there was greater demand on it for resolution. This is consistent with the philosophy that when the judiciary improves its efficiency people will seek resolution of disputes in the judiciary since the expectation is that they will be resolved more efficiently.<sup>34</sup> The increase in cases filed suggests greater public confidence in the judiciary.

Four main characteristics were key to the project's success, and could provide useful guidance for other pilots:

- strong, involved leadership from both the public and private sector;
- modern management techniques;
- participation at all levels;
- improvement in the judicial system's public image; and
- strategic change management.

The pilot reform was a collaborative effort between a business association, a non-profit organization, the Municipality of Itagüí, the Tribunal Superior, and court personnel. The pilot project enjoyed strong support from high government officials, including the Ministry of Justice, and the Supreme Court.<sup>35</sup> The private sector

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<sup>33</sup> The following is based on Javier Said, 'Modernización de Juzgados de Itagüí: Un case de gestion y liderazgo,' unpublished paper, June 1998.

<sup>34</sup> Buscaglia and Dakolias, World Bank Technical Note 350, at p. 18.

<sup>35</sup> Colombian President Cesar Gaviria even attended its inauguration.



provided part of the funds, and technical support for management reforms, and it continually voiced its support for the project while spreading information about the project's success locally and abroad.<sup>36</sup> Although it may be unusual for the private sector to participate so intimately in judicial reform, the business sector in Itagüí has a tradition of contributing to public welfare.<sup>37</sup> In Colombia, participants affirm that judicial independence was not compromised. Other pilot programmes considering private sector support, however, may prefer to have funds channelled through a non-profit group to avoid the appearance of compromising judicial independence.

The active participation of judges and magistrates added validity and strength to the leadership. By involving judges in the development of the pilot project, their support for the project was strong. Judges and public officials formed one of the three main working groups, and they became leaders of the activities. By getting judges' approval and putting them in charge of working groups, the pilot project creators bestowed on the judges a position of status that they lack in the rest of Colombia and most of Latin America. This new sense of their importance further secured judges' involvement in the project, and gave them an improved attitude towards their work and the law.

The Itagüí project also relied on the support of the legislature. In Latin America, where public bodies are often created and managed under complex norms and regulations, laws tend to restrict the implementation of change. The Itagüí pilot project needed the ability to respond to the public's demand for change, fear of personal safety and the delay in justice. In 1990, la Sala de Gobierno del Tribunal Superior de Medellín passed Resolution 158, which allowed the courts to centralize their administrative tasks in a specialized office. Other changes in the national legal framework of justice administration also opened the way for reform.

Like many of Latin America's legal reforms, the Itagüí pilot project focused on streamlining administrative processes. Borrowing from the schools of re-engineering, continual improvement, and strategic management, the reform planners were able to design more efficient, service-oriented processes, and make personnel more efficient, creative, and committed. There was an effort to transform the judicial mentality to accept that the judiciary provides an important service to the public.

Traditionally, Latin American trial judges spend a high percentage of their time on administrative tasks, and there is no clear division between administrative and judicial work. In addition, judges were previously accustomed to working alone with their own staff. The Itagüí pilot project, by contrast, places the bulk of

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<sup>36</sup> Not including hours and expertise volunteered, CITA spent US\$200,000 on the pilot. Funds come from member businesses.

<sup>37</sup> Javier Said, 'Modernización de Juzgados de Itagüí: Un case de gestion y liderazgo', unpublished paper, June 1998, at p. 18. Similarly, French business groups contribute to the normal operation of the commercial courts in France.

administrative tasks with the Cooperative Administrative Office (Oficina de Apoyo Judicial (OAJ)), freeing judges and staff for purely judicial tasks. The OAJ receives and tracks cases, files documents, sends out notices and keeps parties informed, while judges and clerks focus almost exclusively on investigating cases and writing opinions. By centralizing administrative tasks in the OAJ and focusing on efficiency, the Itagüí trial courts have been able to improve their system for tracking cases, assigning judges to cases by lottery, and sending notices. By re-engineering the process of sending notices, for example, the pilot project was able to eliminate a step in the process. The structural changes and process re-engineering have translated into client benefits. Today, clients' cases are processed more quickly, clients receive better service, and they have easier access to more reliable information.

However, the management of the OAJ is in the hands of the judges' who design the changes: every six months, a new director judge is chosen. Changes are designed by those who are familiar with the process and problems facing the courts. In addition, each judge has an opportunity to build leadership skills in the director position and to learn the importance of the team to achieve the results.

Continual quality improvement is another distinguishing characteristic of the Itagüí reform. The pilot courts track client satisfaction as well as other indicators. Every six months, for example, the OAJ conducts a client survey to learn who they are, when they come to the system, and where their dissatisfaction with the service may lie. The surveys allow the OAJ to meet client needs better, and gather new ideas for change. Thus, the OAJ was able to learn that many clients do not understand the legal system, making it difficult for judges and staff to work with them. In response, it created communication and education programmes in which judges give classes on law and procedure for the community. Judges reached out to the community demonstrating their skills and knowledge while at the same time gaining the respect of the community which they lacked.

The OAJ also uses performance indicators to encourage staff efficiency. It has defined eight types of services and created a time limit for each.<sup>38</sup> Very often time limits set by law are not enforced so establishing time limits agreed to by the staff is crucial. Each OAJ staff member makes a commitment to perform these tasks within the defined limits.<sup>39</sup> These time limits are then measured to see whether they have been complied with. Finally, the pilot courts measure judges' productivity by tracking the cases that are filed, the cases pending, and the cases resolved. In many developing countries such tracking is not done because the statistics are not reliable or simply not gathered. In this case, the pilot project kept strict data that could be

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<sup>38</sup> The American Bar Association standard is that civil cases should be resolved within two years of filing. John Goerdts with Chris Lomvardias and Geoff Gallas, 'Re-examining the Pace of Litigation in 39 Urban Trial Courts', National Center for State Courts, 1991, at p. 36.

<sup>39</sup> John Goerdts with Chris Lomvardias, Geoff Gallas, Barry Mahoney, *Examining Court Delay: the Pace of Litigation in 26 Urban Trial Courts* (1987) at p. 35.

used for measurement. Judges also have performance goals, and strive to resolve a certain number of cases each month.<sup>40</sup>

The designers of the Itagüí project were able to clearly define long-term goals, elaborate the strategies to achieve these goals, and communicate these goals and strategies to all involved. These goals were communicated to their own personnel, to higher courts, the lawyers, and the community at large. In this way everyone was aware of the goals of the pilot project and the results that were being sought. Such clarity is important in judicial reform management. Two other important characteristics of Itagüí's planning were that judges were included early on, and long-term goals and strategies were reviewed on a regular basis.

Just as it is important to have judges involved in developing and implementing reform, it is also important to have staff of all levels aware of, committed to, and actively participating in the reform. The Itagüí project was successful in training employees in new management and performance skills, and in incorporating their input into the reform, eventually resulting in a high level of job satisfaction. Training included a clear definition of the court mission, values, beliefs, and main strategies. These messages were printed on signs posted throughout the hallways and conference rooms, and included in the employee manual. Interviews with staff revealed a high level of awareness of the court's stated mission. In addition, these efforts assisted in spreading the mission to all interested parties as well as ensuring a good understanding of the goals.

A survey of several Colombian jurisdictions showed that employees who participated in the Itagüí pilot project adopted an attitude of seeking innovation and continual improvement. On a scale of one to five, in which five stands for a corporate culture of innovation, and one for a traditional corporate culture, Itagüí scored 4.4, as opposed to a range between 3.2 and 3.7 for other jurisdictions. Itagüí employees also displayed a greater level of knowledge about administrative and organizational issues than other comparable jurisdictions. They were familiar with concepts such as teamwork, re-engineering, continual improvement, and performance indicators, because they used them on a daily basis. This was true even though most courts do not have staff specialized in administration.

Institutional reforms have to strike a balance between top-down and bottom-up changes. If decisions are made exclusively in the upper rungs of management, those who implement them at the lower end will be less committed and less knowledgeable. On the other hand, there is a need for leadership – a group or person who ascertains that all the proposed changes work toward a common goal. Itagüí struck a positive balance in this regard. While there was strong leadership and support from upper

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<sup>40</sup> Setting case goals for judges can be a controversial measure. Critics argue that it causes judges to sacrifice justice for speed: perhaps a judge won't investigate a complicated case as thoroughly as they would if they didn't have to meet set performance goals. In the US, pilot projects have shown that publishing information about judges' caseloads can be enough to encourage judges to be efficient. Somerlot, *Judges' Journal*, at p. 6

management, not only did employees implement changes, but they were encouraged to submit proposals. If they were approved, the proposals were financed and implemented. If not, the employee was given an explanation for the decision taken. The archive keeper, for example, suggested and then implemented a method of facilitating retrieval by keeping a computer database of where archives are stored. Having this sort of input gave employees a stake in the reform, and allowed the reform to benefit from the hands-on knowledge of those who worked in the organization. The process gave the employees a permanent voice which encouraged participation and built consensus.

A survey of the 'organizational climate' of Colombia's courts revealed that Itagüí staff was more content with the court work environment than staff of other courts.<sup>41</sup> This can be partly attributed to the fact that they were actively involved in the project, and received positive feedback from clients, from performance measures, and from the community and nation at large. An important aim of the pilot project was to change the public's perception of the judiciary. The result was that the judiciary's image improved. The increase in efficiency alone boosted its image.

Itagüí, then, was able to achieve its goals, resulting in courts and administration that are in a constant process of self-improvement. Another important aspect was the participation process incorporated into the pilot. Proof of its success is that Colombia's judicial council is replicating many of the Itagüí strategies as it strives for greater administrative efficiency in other areas of the country.

## ***II. Peru***

Even in a country where there is arguably little judicial independence, pilot projects provide a mechanism to work at different levels of the courts. The executive in Peru was successful in ridding the country of terrorism, however, the strong executive has found itself criticized for its strong involvement in the judiciary. With some pressure from the executive, the judiciary has taken on a major judicial reform programme. In 1995, the Peruvian government launched an emergency judicial reform period that was to last until the end of 1998. Measures to improve the management of human and financial resources, information technology, courtroom organization and infrastructure were included. Coupled with increased salaries and training, the judiciary has seen a real change. The pilot project is a product of this programme and is an example of the top-down approach of initiating reforms.

Launched in 1996, the Chiclayo pilot project in Peru shares many goals and methods with the Itagüí project. The project, which included five courts, aims to make a clear separation between judicial and administrative functions, centralizing

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<sup>41</sup> On a scale of one to five, Itagüí scored four, compared to an average of 3.5.

administrative functions in one office.<sup>42</sup> Another main focus was to make administrative processes more efficient through the use of modern technology.

The first step in the project was to analyse the existing processes, codes, and regulations, and compare these with reforms undertaken in Costa Rica, Colombia, and the United States. The second step was to create a conceptual framework pinpointing a few clear, critical goals. It is too early to fully evaluate the Chiclayo project. However, it does have important characteristics that would be helpful in creating other pilot projects. Further, Chiclayo helps to highlight how even a newly launched project needs to continually reassess its progress and adjust its original plan to current circumstances. Chiclayo has also benefited from the active support of the high level officials and active involvement of the judges as well as the Supreme Court. This support not only boosted morale, but has assured Chiclayo its ability to carry out the project.

The five magistrates of the pilot were active participants in the reform, and together created a system of management for the courts. They were an important part of the design process similar to Colombia. They also alternate acting as president, a position which includes managing relations with the president of the Superior Court, the general and executive management of the courts, and other institutions. Their skill in working together has been one of the strong points of the reform.

One of the first changes made was to place administrative staff in charge of public contact, purely administrative tasks, and procedural tasks that were not judicial in nature. This is different from most Latin American courts where most employees as well as the judges attend to the public. In addition, a common administrative office was created.

The courts began with newly trained staff who had not previously worked in courts to avoid the common problem of resistance to change and incorporating the same culture and bad habits of the old system into the new. Classes were offered in computer use, and in the new processes that the reform was to use. A key characteristic of the Chiclayo pilot was incorporating computer technology to speed up case processing and other administrative tasks. Every staff member has a computer terminal. Today, judges and staff agree that there is a need for more courses. A positive result, since more training is also an ingredient of continual improvement.

Although judges participated in the process, the group in charge of redesigning processes in Chiclayo worked separately from the group that was eventually to implement these processes. Similarly, lawyers and other users of the system did not participate and later felt alienated by the changes. This is not surprising since lawyers and users can often be averse to changes, especially when there is no effort to explain

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<sup>42</sup> The following is based on an interview with Robert Page, principal of DPK consulting, 10 November 1998 in Quito, Ecuador.

why the changes are being made. Any further changes that Chiclayo implements may benefit from consultation with the beneficiaries, as was the case in Itagüí.

The Chiclayo project began without a caseload. The idea was that startup would be smoother if the system was not immediately inundated with cases. After a year and a half, however, Chiclayo's caseload has grown to a regular size, and the administration has not been able to keep up with the demand. The court was not prepared to increase its productivity from the first year. Clients complain they must wait in long lines, computer systems need maintenance, and judges worry that they don't have enough administrative staff. There is a common perception that the problem is with the limited number of staff rather than seeking a solution via redesigning the processes with the current number of staff.<sup>43</sup> Chiclayo's next step is to reassess its administrative needs, and carefully define the responsibilities of each position. Such a reassessment could provide insight into where efficiency could be improved. Perhaps if the Chiclayo pilot had started with a regular caseload it would have been more realistic in its expectations for performance.

Chiclayo used the jurisdictional procedures prescribed by the existing codes and rules. The result is a mix of modern organization and management focused on service and efficiency, with procedures that were originally fixed with a different set of priorities. This is an example of a pilot project working within existing legislation. The experience, however, could lead to changes in the law. Chiclayo must assess whether there is a need to change some of these laws. Specifically, it should look at whether the time given for each step of the procedure is reasonable or too long; whether each procedure reflects the goal of efficiency;<sup>44</sup> whether it is clear which party is responsible for each step of each procedure; and whether there are any contradictions between the Chiclayo procedures and the existing codes and regulations. With its project experience, Chiclayo could make recommendations for administrative or legislative changes.

There are many benefits in seeing how different models work and especially in discussing the results of each of the experiences. An analysis could look into whether it is financially viable for another court to implement a reform that requires each staff member to have a computer. It may also be unrealistic to start without a caseload; temporary judges could be used instead. Peru has used temporary judges in many courts to reduce pending cases which has been successful. Perhaps the model could be adapted for other courts taking the above into account.

In addition, a related study would be a comparison with the 40 pilot courts in Lima. While the Lima and Chiclayo model courts share many characteristics, there

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<sup>43</sup> Goerdt, 'Examining Court Delay' in *Judges' Journal* at pp. 40–41.

<sup>44</sup> Efficiency is a complex concept which includes both time and quality. See Brian J. Ostrom, Roger A. Hanson with John Goerdt and Donald Rebovich, 'Efficiency, Timeliness and Quality: A New Perspective from Nine State Criminal Trial Courts', National Center for State Courts and the American Prosecutors Research Institute, 1998, at p. 3 (Unpublished and on file with authors).

are some key differences, and it is important to understand how these differences play out in day-to-day administration. A few areas of interest are: in Lima, there is a co-ordinating judge who acts as a liaison between the public and the other judges, whereas in Chiclayo there is no judge in this role; Lima has more specialized functions, such as a team focusing on notices, whereas in Chiclayo this is the job of the regular staff. Unlike Chiclayo, Lima began with a pending caseload and delay reduction of pending cases is being done during the pilot project rather than prior to the start.<sup>45</sup> Lima created information windows where the public can access information about the status of cases; and in Lima a co-operative administrative office was created for each six judges using the same personnel as before, while Chiclayo used new personnel.

The projects in Lima have already shown successful results. The clearance rate has reached 126 per cent in 1997 which is a substantial improvement from 66 per cent in 1995. This is evidence of the effective use of management tools that perhaps could be adapted to other courts to ensure that the changes become part of the institutional culture.<sup>46</sup> Both systems have strengths and weaknesses, and in comparing them, it is important to keep in mind their different settings. One is in a large city, the other in a more rural area. Some processes will work better in one setting. Reformers in Peru are fortunate to have the two projects working side-by-side and should reap the advantages of comparative analysis.

### **III. The Ukraine**

In the Ukraine, three model courts are being tested over a three-year period. Since the change to a market-orientated economy, the Ukraine has been forced to address the weakness of the judiciary as it faces numerous changes in the types of cases that it receives. This demand has created a need for rapid change, and this pilot court approach is an example of one way to begin the process of change. With the new constitution in 1996, the judicial branch was declared an independent branch of government. That has created an even greater expectation of change.

As in many Latin American countries, Ukrainian judges are traditionally responsible for the administrative work in the courts. It is common for judges to hear the grounds for filing a case, decide whether there are sufficient grounds, assign the case, and then go on to hear the case. Judges attend to the public for a large part of the day. To create a clearer distinction between administrative and judicial roles, the pilot courts seek to gain a better understanding of the two types of functions, to allocate human resources more efficiently, and to revise administrative procedures.

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<sup>45</sup> This explains the higher pending cases in the system (about 950 cases per judge). Pending cases can influence the time to resolve a case so if the courts can dispose of the inactive caseload this may improve the pace of litigation. Goerd, 'Examining Court Delay' in *Judges' Journal* at p. 14. This may also explain the high clearance rate since many of the inactive cases are being disposed of as well.

<sup>46</sup> See Kotter, *Leading Change*.

The judges have been given the opportunity to study other systems and design their own project.

Although there are demands on the courts, from 1992–1996, the number of filed cases decreased by 13 per cent in one court. The drop in the number of cases filed can be explained by the decline in economic activity, and the lack of public confidence in the judicial system. More recently, however, the project has resulted in an increase in the number of cases opened which may be a result of greater confidence. In order to ensure quality in the system it is hoped that the pilot project will have to address the fact that judges do not have timely access to current laws, a difficulty exacerbated by the fact that there is a new Constitution and a new Civil Procedure Code.

Courts are also faced with problems of infrastructure, low judicial salaries and lack of modern technology. Some courts do not even have typewriters or photocopiers, and lack the financial resources to get this kind of equipment. As in many Eastern European countries, both the court administrative budget and policy are under the authority of the Ministry of Justice. Thus, the pilot project requires the co-operation of the Ministry of Justice as well as the judiciary to implement new processes. The Ministry of Justice was to provide formal authorization for the pilot courts to proceed. The plan also includes physical renovations, which provide judges more privacy, and gives the public better access through a new reception area. This pilot project is just in the beginning stages and although there are no results as of yet, the design process has emphasized participation. However, the degree of participation does not match that of Itagüí.

#### ***IV. Argentina***

Argentina has set judicial reform as a priority. The judiciary has been faced with strong criticism concerning its independence.<sup>47</sup> One poll shows that more than 75 per cent of the population does not believe that the judiciary is independent or efficient.<sup>48</sup> This stems, in part, from the recent packing of the Supreme Court increasing the number from five to nine judges. Although many structural reforms have taken place to improve the economy, the judiciary has been left for last. The pilot court experience in Argentina is an example of a co-operative effort between the judiciary and the executive branch. Although the initial idea came from the executive branch, the judiciary and the individual courts welcomed the project. Involvement from the executive is not uncommon. In the state of California, the legislature imposed a delay reduction initiative on the courts, which initially created resentment from judges.<sup>49</sup> This type of co-ordination among the different branches of government may encourage the process of reform even more.<sup>50</sup>

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<sup>47</sup> Argentina ranks 43rd out of the worst 46 countries for the lowest confidence in fair administration of justice by society, *World Competitiveness Yearbook 1998*.

<sup>48</sup> Marcela Goldin, 'La infrajusticia,' *Noticias*, 25 April 1993.

<sup>49</sup> Somerlet, *Judges' Journal* at p. 6.

<sup>50</sup> The Civil Justice Reform Act of 1990 by the Legislature in the United States required the Federal Courts to develop a plan for reducing cost and delays in the courts. 'Just, Speedy,



One study found that in 1993 some of the Civil Trial Courts were only disposing of 20 per cent of the cases filed while the median number of filings per judge had decreased.<sup>51</sup> Delays in the courts have increased and, therefore, the cost incurred by court users has increased. The reasons are manifold. Administrative responsibilities of the judges were not being delegated placing great administrative burdens on the judges. In some courts the hours of work are limited to 1.30 pm.

To address some of these issues a programme to create model courts has been approved.<sup>52</sup> Two courts that stand out – each has a pending caseload of more than 50,000 – were chosen.<sup>53</sup> These courts represent two different types of Federal First Instance Courts: Mar del Plata is a multi-jurisdictional court that receives civil, commercial and labour cases; Resistencia is also multi-jurisdictional and receives civil, commercial, labour, and criminal cases. These courts were chosen because of their large caseloads, enthusiasm to participate, and willingness to try something different. Instead of simply increasing the number of judges or courts, a different route was agreed to.<sup>54</sup> It has been designed so that the judges themselves are the main part of the design process. In this way, it is hoped that they will become leaders of the process.

The model court operation is designed to address key administrative issues at the court level. These include designing different administrative techniques, introducing management systems, training judges and personnel in these areas, and the dissemination and evaluation of the progress. Each model court will test and evaluate different measures that can later be expanded over the entire system. A new organizational structure will be implemented in each court, attempting to utilize the existing personnel in the most efficient manner, although a separate group will be hired to implement a delay reduction programme for the existing pending cases.<sup>55</sup>

Court performance standards will be developed that each court can use to evaluate progress. The model court project will also train judges in areas addressed

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*cont.*

and Inexpensive? An Evaluation of Judicial Case Management Under the CJRA', Research Brief, RAND Institute for Civil Justice at p. 1.

<sup>51</sup> Edgardo Buscaglia and Maria Dakolias, 'Judicial Reform in Latin America: The Experience of Argentina and Ecuador', World Bank Technical Paper 350, at p. 9.

<sup>52</sup> See Model Court Development Project Appraisal Document, March 1998, World Bank Document, Report no. 17459-AR.

<sup>53</sup> The pilot programme will include a group of ten judges in Buenos Aires as well.

<sup>54</sup> In Santiago, Chile, between 1979 and 1991, the number of civil courts quadrupled as courts serving other purposes were converted into civil courts. However, the duration of both instances (ambas instancias) did not change. Duracion del Procedimiento Sumario en los Juzgados de Santiago. Carlos Cerda Fernandez, 1993, Universidad Diego Portales, at p. 8.

<sup>55</sup> For a description of delay reduction programmes that include: measuring disposition times (p. 7), calendaring systems (p.1 3), case management (p. 15), case processing time standards (p. 17), backlog (p. 18), and ADR (p. 19) see 'Implementing Delay Reduction and Delay Prevention Programs in Urban Trial Courts; Preliminary Findings from Current Research', National Center for State Courts, Barry Mahoney, Larry L. Sipes, and Jeanne A. Ito, September 1985.

by the project. This will focus on developing an understanding of leadership, the importance of delegation, and the management of change. Court personnel will be trained in new administrative and case management techniques, information technology, records management, the development of forms, development of a budget, human resources, motivating personnel, collection and reporting of cases.

As with the pilot projects in Lima, information centres will be established in the courts to serve the public better. They will provide information on the court process, case status and receive comments/suggestions and complaints about the process. In this way, judges will avoid attending to the public as before. Personnel dedicated to the public will not only alleviate the burden from the judges but will also lead to personnel trained in dealing with users.

The model court project will emphasize decentralization and stakeholder participation. Seminars will be held and working groups will be formed to review the design of the model courts, the different stages of progress, and the results. Surveys will be used to evaluate the model courts. It is hoped that this project can lead to results which can be adapted elsewhere in Argentina.

## **F. Evaluating Progress**

Thorough, constant evaluation is one of the most important aspects of pilot court projects. By assessing each measure of the project, reformers can better weigh whether it should be adopted in another region, or even in another country. So far, however, with the exception of a few pilot projects in the United States, Colombia, and Peru, scant literature exists on the lessons from such experiences,<sup>56</sup> and there has been little international exchange of experiences. This section highlights the importance of evaluations, and discusses some of the lessons learned thus far on how best to conduct them.

One evaluation lesson that has been documented concerns who conducts the study: it is important to have independent evaluations from sources not involved in the reform.<sup>57</sup> In the evaluation of experiences in courts in the United States, researchers found that while outside reports indicate that there was no significant effect on time to disposition, internal reports indicate there were.<sup>58</sup> This is not to say

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<sup>56</sup> The Rand Evaluation took place over five years and compared over 12,000 cases in the pilot and comparison courts as well as case cost and delay data from before and after implementation of the Civil Justice Reform Act of 1990 (CJRA). Hornby, *Judges' Journal* at p. 15. Giuseppe Di Federico conducted pilot projects in Italy as well.

<sup>57</sup> One example of this is the evaluation done by Javier Said of Itagui in Colombia.

<sup>58</sup> The Administrative Office of the US Courts states that a one month decrease is important. Gail Carter, 'Is Differentiated Case Management Working in US District Courts?' Getting a Handle on Civil Justice Reform in (Spring 1988) 37 *Judges' Journal* 2, American Bar Association, at p. 39.

that inside participation in the evaluation process is not important, as there is a need for self-evaluation of the process as well. However, as always, there is a need for an objective review. This type of independent evaluation was conducted in Peru and is being planned in Argentina.

Another important lesson about the evaluation process is that the subject of study should be carefully chosen. Until now, assessments of judicial reform projects in developing countries have not focused on the impact of the new activities, but rather on whether projects were completed and how funding was used.<sup>59</sup> The reason for this is not only that impact studies cost more, but also that most institutions conduct assessments only for a short period at the end of the project. The impact is rarely mentioned, partly because it may not be as measurable at the time of completion.<sup>60</sup> However, some way of measuring the impact should be considered during the project implementation like the surveys done in Colombia. Defining goals is essential because completion and funding of a project does not provide an adequate evaluation of the project.

Timing of the evaluation, then, should not be limited to the period directly after the project. Rather, evaluations should take place throughout the project as was done in Colombia. Pilot projects even need to be reviewed during the implementation stage to determine whether adjustments should be made along the way which is being considered in Peru. The process of reform is just as important as the end result; by studying this process, one can learn the causes for success or failure of a reform. For example, measuring the level of involvement of the organizations that finance the effort is important to the progress assessment and could benefit other projects in other parts of the world.<sup>61</sup> In the design of the Argentinian project, evaluation and dissemination of the evaluation figures is as important as ongoing activity.

Before and after data is also important in showing the effect of changes. The ability to demonstrate positive change allows reformers to win support. The Colombia pilot project shows these positive results through statistics and surveys. Objective and subjective data are measured throughout the process, providing a basis for impact analysis. Finally, evaluations are important because, if designed carefully, they can yield unexpected results. In the United States, for example, an evaluation revealed that a pilot's tracking system<sup>62</sup> had actually helped to provide a backbone structure for the courts, and the tool was particularly useful for new judges

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<sup>59</sup> Stephen Golub, 'Assessing and Enhancing the Impact of Democratic Development Projects: A Practitioner's Perspective' in (Spring 1993) 28 *Studies in Comparative International Development* 1 at p. 25

<sup>60</sup> Ibid. at p. 63

<sup>61</sup> Ibid. at p. 64.

<sup>62</sup> Differentiated case management assigns similar cases to similar processing procedures based on the level of court resources and judicial preparation required for fair and timely disposition. Carter, *Judges' Journal* at p. 38.

because it gave them guidelines.<sup>63</sup> These added benefits can generate teamwork within the courts and support for an innovative environment.

Although not all pilot projects will be successful, there is much to learn from each experience. One pilot project, for example, found that changes implemented had little effect on time to disposition or litigation costs.<sup>64</sup> Another project revealed that early judicial case management means reduced time to disposition, at the cost of more attorney hours.<sup>65</sup> However, if the pilots are successful, the data provided by pilots can be useful in developing a national programme, or in replicating the pilot experience in other courts. If there is more than one pilot, reformers are able to compare different methods and choose from them.

## G. Some Lessons Learned

One of the elements of success is the support of a political authority guiding and promoting the project while protecting it from sabotage by vested interests.<sup>66</sup> It is also essential that the chief judge of each court be supportive and provide leadership.<sup>67</sup> One example of this is the rotation of leaders in the Colombia and Peru pilots. As evident in many of the pilot projects, participation by the all interested parties is essential. It is interesting to note that most of the time, it is in the lower courts that pilot reforms begin. In this respect, pilot reforms tend to work from the bottom-up with support from the top. This support can make the difference between success and failure.

An important finding is that the success of a pilot project depends in great part on the strength of the court personnel participating in the pilot.<sup>68</sup> A good example of this is the participation encouraged in the Colombia pilot. To carry through a

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<sup>63</sup> Stienstra, *Judges' Journal* at p. 20.

<sup>64</sup> Somerlot, *Judges' Journal* at p. 6. See also 'Just, Speedy, and Inexpensive? An Evaluation of Judicial Case Management Under the CJRA', Research Brief, RAND Institute for Civil Justice. The objectives of the pilot project were to improve efficiency and cut costs without decreasing satisfaction of the users. The results were that there was no effect on time. The cost for the litigant increased with early judicial management and alternative dispute resolution did not have any significant effect on time, cost or attorney satisfaction, though participants preferred ADR.

<sup>65</sup> *Ibid.*

<sup>66</sup> In California, Chief Justice Malcolm Lucas made the project a priority while in the Federal Court System in the United States there was no active federal judge to provide leadership; rather an outside institution was in charge of the task force. Somerlot, *Judges' Journal* at p. 7.

<sup>67</sup> This has been essential for promoting efficient case management. Hornby, *Judges' Journal* at p. 14. Also Goerdts, 'Examining Court Delay' in *Judges' Journal* at p. 4.; 'Judges Need Commitment to Implement Efficient Case Processing'. Goerdts, 'Examining Court Delay' in *Judges' Journal* at p. 40–41

<sup>68</sup> Somerlot, *Judges' Journal* at p. 6.

project, judges must work closely with their staff, as well as with the bar and other interested parties. As a result, collegiality among the staff and judges typically increases after pilot experiences.<sup>69</sup>

Beyond the judiciary, pilot projects require co-operation from the community at large. The process and design of the pilot should include ‘everyone who would benefit from the fair, prompt, and economical resolution of disputes’.<sup>70</sup> They require an interdisciplinary and multidisciplinary approach<sup>71</sup> which allows for co-operation in removing the obstacles to fair and efficient judicial dispositions. This is consistent with the fact that courts are a service to society and there are many stakeholders in the reform process who should participate so that reforms cannot be reversed.

Participation requires that there be access to information. Pilot projects teach us that it is important to establish a mechanism to report and disseminate information on performance standards. One pilot found that public reporting of the judges’ calendars is associated with a decrease in the number of pending cases.<sup>72</sup> Such information permits civil society to hold the judiciary accountable, and can assist in developing clear performance standards by which to assess the progress of the project as was the case in Colombia.<sup>73</sup> Performance measures can be used to improve management in the courts, and to encourage efficiency.<sup>74</sup> A similar approach is to report judge’s case statistics.<sup>75</sup> The courts themselves set the goals and then it is up to them to meet these goals.<sup>76</sup>

Many successful pilot programmes implement intensive training during the design as well as the implementation stages of the programme. In one pilot project in California, training included teams of judges, court personnel, and members of the bar associations.<sup>77</sup> Training was an important element in Colombia and Peru as well. Emphasis should be given to leadership training, since this is essential to motivating others. Training is essential if there is a need for change in the working culture in the courts. It is not enough just to change the process.

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<sup>69</sup> Ibid.

<sup>70</sup> Ibid. at p. 62.

<sup>71</sup> Ibid.

<sup>72</sup> Ibid. at p. 6.

<sup>73</sup> Examples include ‘Trial Court Performance Standards’, The Commission on Trial Court Performance Standards (a judicial project of the National Center for State Courts and the Bureau of Justice Assistance, United States Department of Justice), 1990; ‘Report on Government Services, Volume One: Education, Health, Justice Emergency Management’, The Steering Committee for the Review of Commonwealth/State Service Provision, 1998; ‘Evaluación Cuantitativa de la Justicia, Período de 1994’, Ministerio de Justicia y del Derecho and Instituto Ser de Investigación, 1996; Impact Assessment of Legal Reform Measures, Stefanie Lorenzen, World Bank Working Paper, 1997.

<sup>74</sup> Steinstra, *Judges’ Journal* at p. 20.

<sup>75</sup> The United States Congress enacted mandatory statistical reports. Hornby, *Judges’ Journal* at p. 15, note 7. Many state courts report statistics monthly. Goerdt, ‘Examining Court Delay’ in *Judges’ Journal* at p. 35.

<sup>76</sup> Goerdt, ‘Examining Court Delay’ in *Judges’ Journal* at p. 41.

<sup>77</sup> Somerlot, *Judges’ Journal* at p. 61.

## H. Change in Culture

Changing the legal culture has been a common goal of the pilot projects discussed in this article. Although each country has a different legal system, each has attempted to change the culture in which the courts operate to complement the administrative and procedural reforms introduced. The culture of service in the judiciary has included management, participation and leadership. These characteristics are clearly new for many judiciaries and require a new legal culture where judges lead changes, take initiative, and manage the change process. This change in culture includes an attitudinal change in that the problems related to delay are not seen as external, but rather can be effectively managed by the judges themselves.<sup>78</sup> For example, very often judges argue that too few judges are the primary cause for delay. However, this appears to be a perception usually held by unreformed courts.<sup>79</sup>

Where it has been implemented, a change in the legal culture has encouraged the judiciary to take into account client satisfaction as was done in the Colombian pilot experience. Although Colombia is quite different from the Ukraine, both projects have specifically attempted to change the legal culture towards a more service and management oriented judiciary. This common element supports the argument that perhaps such cultures can be transported from one country to another regardless of the legal framework.<sup>80</sup>

## I. Conclusion

The number of pilot experiences thus far is still low, and there is a dearth of information on pilot programmes that have been implemented. However, a growing number of countries are implementing pilot-style reforms. As governments across Eastern Europe and Latin America consider how best to implement judicial reforms, they should note that pilot programmes offer an informative, low-risk alternative. Pilots can be less costly than larger scale reforms and can be financed through more innovative ways through the private sector or international organizations like those financing the Ukraine and Argentina pilots. In fact, some organizations like the World Bank have designed new instruments to facilitate learning and innovation

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<sup>78</sup> Perceptions about the problems were different in courts that did not implement delay reduction programmes. Goerd, 'Examining Court Delay' in *Judges' Journal* at p. 45.

<sup>79</sup> John Goerd with Chris Lomvardias, Geoff Gallas and Barry Mahoney, *Examining Court Delay: The Pace of Litigation in 26 Urban Trial Courts* (1987), National Center for State Courts, 1989, pp.41–42.

<sup>80</sup> George Priest, 'Private Litigants and the Court Congestion Problem' in 69 *Boston University Law Review* at p. 530.

projects.<sup>81</sup> These specific instruments allow for flexible designs, experimentation as well as building partnerships and consensus. They provide a new paradigm in the role of multilateral co-operation: to encourage countries through the use of pilot courts to incorporate innovation as part of their normal process of development.

Many judiciaries are experiencing similar challenges. As a result, globalization of judicial reform and the need for greater co-operation has increased. Greater investment in building and sharing knowledge is essential for the innovation process. Promoting the exchange of experiences<sup>82</sup> like those in Colombia, Peru, the Ukraine and Argentina should lead to greater awareness of the challenges of judicial reform.<sup>83</sup> A globalization of reform may increase the chances that courts succeed in their quest for providing better quality, efficiency and access to the public.

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<sup>81</sup> Adaptable lending instruments were introduced in the World Bank in 1997 and have been used to finance a judicial reform pilot project in Argentina.

<sup>82</sup> Examples of such exchanges include China and Argentina which agreed to exchange information on laws and regulations, FBIS, 8 June 1998, 'Argentina, PRC Sign Judicial Cooperation Accord'; and Spain and Germany are designing ways to fight terrorism, drug trafficking and prostitution, FBIS, 30 January 1997, 'Spain, Germany: Agreement on Defense, Judicial Issues Reached at Bonn Summit'.

<sup>83</sup> This may even promote more legal integration. See proposal of President Chirac FBIS, 7 February 1997, France, 'Chirac Pushing for European Judicial Police Integration'.