Justice Reform Projects in Latin America: Lessons Learned (1995-2010)

David F. Varela, Tirza Rivera-Cirza and Milena Sánchez de Boado

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I. **PURPOSE AND METHODOLOGY**

1. In early 2010, the Bank commissioned an external review by independent international experts of its first eight justice reform projects which were carried out between 1995 and 2007 in Argentina, Bolivia, Colombia, Ecuador, Guatemala, Peru and Venezuela. The review was done in order to: (a) gather the results of dispersed internal/external evaluations; (b) cluster the main findings of such evaluations under a common framework; and (c) distill the lessons learned for projects in this area.

2. The review was conducted in four phases. During the first phase all the Implementation Completion Reports (ICRs), prepared by the Task Teams at the end of each project, as well as the Independent Evaluation Group (IEG) reviews conducted on the ICRs were carefully reviewed by the independent experts to obtain basic information on project design, implementation, results, and lessons learned to prepare a summary analysis of each project. In the second phase, all eight projects were reviewed as a whole to distill the main lessons learned. In a third phase, a confidential electronic survey of stakeholders involved in the implementation of the projects (justice sector and government officials, lawyers, private sector and civil society representatives) was carried to gather their views on the projects implemented in their respective countries. Finally in a fourth phase, the information resulting from the surveys was shared with experts involved in similar projects in Latin America and other regions and incorporated into a final report which summarized the main conclusions and recommendations emerging from this exercise.

II. **THE WORLD BANK AND OTHER DONORS ACTIVE IN THE JUSTICE SECTORS OF LATIN AMERICA**

3. **Bilateral donors have been active in the Latin American justice sectors supporting various reform priorities.** Bilateral donors have been supporting justice reforms in Latin America since the 1960s, initially within the Law and Development Movement that emphasized training lawyers to use the law to leverage the development process. Work was largely supported by the US Government and the Ford Foundation, and came to an abrupt end because of complaints about a lack of respect for local traditions. After a brief hiatus, in the early 1980s the main rationale was the connection between the justice sector and democratic governance; the courts were considered the weak pillar of democracy and, thus, the key to establishing politically stable regimes. In the 1990s, the rationale for donor support changed; the justice sector provided a basic public service for citizens and enterprises that needed modernization. The United States, the main donor, has continued focusing on criminal justice and its role in democratic governance as well as concerns with growing transnational crime and citizen insecurity. The United States has been the largest source of donor support for the *Casas de Justicia* as a mechanism for bringing justice to the poor and marginalized groups. The United States and other donors (the European Union, France, Germany, Spain, the United Kingdom) have worked not only with sector institutions but also with organizations representing vulnerable groups like indigenous peoples.
4. The multilateral development banks arrived late to the justice sectors in Latin America but with their own reform programs. Until the early 1990s, the provisions in the World Bank and the Inter-American Development Bank’s (IADB) Articles of Agreement against political involvement were interpreted as banning any direct work with branches of Government other than the Executive. \(^1\) However, in the context of Washington Consensus-based economic reforms, institutional economic theories on the connection between rule of law and market development provided a rationale for support and prompted less strict interpretations. Subsequent studies tried to establish statistical correlations between justice sectors and economic growth, and found relationships between rule of law and indicators of social welfare. \(^2\) More recently, the UN Legal Empowerment for the Poor Report \(^3\) has also acknowledged a connection between justice institutions and poverty reduction (Table No. 1).

<table>
<thead>
<tr>
<th>Country</th>
<th>World Bank</th>
<th>IDB</th>
<th>UN</th>
<th>US</th>
<th>EU</th>
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<tr>
<td>Paraguay</td>
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<td>Judiciary, Judicial Council</td>
<td>Public Ministry</td>
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<tr>
<td>Peru</td>
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<td>Ombudsman, Judiciary, Judicial Council</td>
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<td>Switzerland</td>
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III. MAIN FINDING: JUSTICE REFORM PROJECTS ARE PARTICULARLY CHALLENGING BUT CAN MAKE A CRITICAL CONTRIBUTION TO IMPROVING GOVERNANCE IN LATIN AMERICA

A. Donor support of justice reform projects: The dilemmas of dealing with the complexity of the macro framework through micro interventions

5. Justice reforms that involved substantial investment and technical assistance programs required financial support from bilateral donors and MDBs. Latin American countries invested significant amounts in these reform programs, sometimes backed by constitutional or legal provisions guaranteeing a specific percentage of the national budget to the judiciary and other sector agencies. Such mandatory allocations always equaled or far exceeded OECD figures (rarely higher than two percent) and even where they were not adopted, sector budgets throughout Latin America are above the OECD average of 0.40 percent of GDP. However, as most of the additional funding went for operational expenditures (in particular, salaries) and the resources needed for investment or technical assistance largely exceeded the budget envelopes, donor support was requested. The United States Agency for International Development (USAID), the IADB and the WBG were the principal external actors, \(^4\) joined at a later stage by the United Nations (UN) and the European Union (EU). Other bilateral donors (Great Britain, France, Germany, Spain) also made substantial contributions while a series of foundations (Ford, Open Society Institute, DPLF) provided important non-financial support.

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\(^4\) Hammergren 2007.
Latin America is the birthplace of justice sector programs financed by the World Bank. Formal assistance was initiated in 1992, when the institution determined that it had the authority to support justice sector reforms connected with economic development. Subsequently, the first loan approved for the sector financed the Venezuela Judicial Infrastructure Development Project (US$30 million). Thereafter, the composition and focus of Bank assistance has progressed gradually. Between 1992 and 2007, the Bank approved 12 projects for Latin American countries (about US$180 million in aggregate lending), all including financing of physical investments (goods and works), and technical assistance (consultants and training).  

6. During the first period (1992-1996), multilaterals faced a strategic dilemma: whether to enter immediately with investments and technical assistance or start with consultation/participation mechanisms as well as analytical tools. The initial assistance requests focused on refurbishing court infrastructure, and modernizing Information and Communications Technology (ICT) equipment so the earliest projects (Venezuela, Guatemala and Argentina) included substantial financing for these inputs. Implementation difficulties, questionable ownership and criticism from local and international agencies (in particular human rights NGOs) encouraged the multilateral banks to re-think their approach. This process of refinement led to consultations with internal and external stakeholders (e.g. judges, businesses, civil society groups) and resulted in a more inclusive approach first tested in the middle of the implementation of the World Bank Venezuela Judicial Infrastructure Project. It also led to sector diagnostics and stakeholder analysis, and recognition that justice reform is a long term process, requiring broad consensus among stakeholders, and depending on leadership from judges and key policy-makers. Resulting analytic work includes the sector assessments conducted by the Bank in Argentina and Ecuador between 1992 and 1995, the first statistical review of the court system in the Dominican Republic and the “users and uses of justice” studies for Argentina, Brazil, Ecuador, Mexico and Peru.  

7. Between 1996 and 2002 multilaterals’ projects faced additional dilemmas: whether to work with the Judiciaries around goals of improved court efficiency or engage other users/clients on access/transparency issues; build on programs begun by the bilaterals or undertake something different. Following the practice of other donors, emphasis was placed on piloting new tools (especially automated case management systems) and developing judicial training capacities. Internal participatory methods (bottom-up and top-down) were encouraged to address resistance to change in inherently conservative and collegially managed institutions. Demands for greater access to justice and enhanced transparency/accountability also affected programming. Multilaterals found that their justice projects faced challenges additional to those of other bilaterals.  

5 Comparisons are difficult as justice reforms are sometimes incorporated in larger public sector programs. Broadly speaking, it is estimated that USAID has committed around $600 million since the 1980s. After their entry into the sector in the early 1990s, the IDB has committed $200 million, and considerably more if one includes its new emphasis on citizen security programs.  

6 The following paper summarizes the main findings of these studies: Hammergren, Linn, “Using case file analysis to improve judicial reform strategies: the World Bank experience in Latin America”, paper presented at the IX International CLAD Congress on the Reform of the State and the Public Administration, Madrid, Spain, Nov. 2-5, 2004, 16 pp.
donors. Because most justice sector agencies had no previous experience with project planning and implementation or with the procurement and financial management rules of the multilaterals, Project Implementation Units (PIUs) took over that responsibility as opposed to more standard public sector reform projects whose implementation was increasingly entrusted to a line agency within the Government, or in the case of some bilaterals to outside contractors.

4. **The dilemma on whether or not to enter into criminal justice or into the social dimensions of the justice sector (and consequently adopt a broader sector perspective) was particularly difficult.** Work in criminal justice forced the multilaterals to look beyond the court system. Even in non-criminal justice operations, the capacity building focus had to be broader, not just judges but also other court staff. However, in the case of the IDB, UN and EU’s criminal justice projects (as in the bilateral programs), prosecutors, public defenders, and police investigators had to be included. This broadening of actors was of paramount importance. Prosecutors, defenders, and police are key actors in the criminal justice process, especially after recent reforms wherein their role has become more critical to the investigation and trial stages. Demand for support on the social side of justice (access for the poor and vulnerable) as well as research and innovation also grew. Efforts were made to identify policy gaps that affect project impacts. This led to an emphasis on project monitoring and evaluation (including statistical systems), and complementary knowledge-sharing programs like the ones led by the World Bank Institute (WBI).

5. **These dilemmas only reflected the fact that justice reform projects are especially complex and tend to overpromise in an effort to please a multi-faceted constituency.** Justice is one of the most complex areas for public sector reforms for Governments and Donors alike. They require consistent political will, significant resources, sufficient time to repair or build institutions, and policy reforms to formal and informal rules coupled with changes in legal cultures. Treated as an organic whole, the justice sector poses particularly daunting coordination challenges because key players are drawn from all three branches of Government and from civil society. For the projects to have an impact not only the Judiciary but a number of these other constituencies have to be engaged. The main challenge is to structure the project as a manageable set of components/activities to implement practical solutions for particular micro problems (for instance, case delays or congestion) while achieving broader policy objectives that are, nevertheless, influenced by exogenous factors (for instance, rising crime and violence, in the case of the all criminal justice projects). As an optimal policy solution to a systemic macro problem that simultaneously engages all actors in an entire country is extremely difficult to implement, most projects must opt for a less than optimal solution, typically pilots designed to test some reforms at the micro level before they are mainstreamed.

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7 The interdependent nature of criminal justice actors (what the French call the criminal justice chain) has to be kept in mind. In order to truly address the issues, all three critical actors in the sector must be addressed – judges, prosecutors and law enforcement. To deal with only one actor (judge) is akin to treating a symptom while ignoring the disease. The actions of law enforcement, impact the prosecutor, which in turn impacts the courts. The court can only address cases which are placed before it for decision – the actors that decide what cases will come before the court are the prosecutors.
6. **The wide variety of functional areas and management processes available for reform within the justice sector requires a careful review of the implications before determining reform priorities.** Most first generation donor-financed projects in Latin America tried to cover multiple functional areas and management processes to achieve quick, high impact results. Unfortunately, most focused on the constitutional or legal framework of the functional areas, i.e. on normative principles, without sufficient attention to the management processes needed to encourage and affect these reforms, i.e. ignoring the public sector management side of the implementation of those normative principles. As will be seen below, one of the main lessons learned of those experiences and international best practices is that no single project should be so ambitious. Even in cases that showed some positive outcomes generally the risk of falling short of expectations was not properly assessed and lessons learned were not widely shared.

7. **The intertwined nature of functional areas and internal management processes requires a more focused approach to achieve durable reforms.** Development interventions in the field should be more modest and avoid overpromising. The number of operators and other stakeholders suggests great caution should be exercised during the design and implementation phases, in the selection of functional areas or management processes to achieve tangible reform goals. It is extremely difficult to undertake a comprehensive reform that simultaneously tackles all functions and processes. Policy-makers will have to select priorities consistent with societal demands and articulate a timeframe that extends interventions through the various political cycles. Moreover, selected priorities must include mechanisms that foster reform ownership to ensure long term sustainability.

B. **The World Bank experience with investment and technical assistance lending: Recurrent tensions between the policy framework and project work**

<table>
<thead>
<tr>
<th>Country</th>
<th>Project name</th>
<th>Implementation period</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Argentina</td>
<td>Model Court Development Project</td>
<td>1998-2005</td>
<td>$5,000,000</td>
</tr>
<tr>
<td>Bolivia</td>
<td>Judicial Reform Project</td>
<td>1995-2000</td>
<td>$11,000,000</td>
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<tr>
<td>Colombia</td>
<td>Judicial Conflict Resolution Improvement Project</td>
<td>2002-2006</td>
<td>$5,000,000</td>
</tr>
<tr>
<td>Ecuador</td>
<td>Judicial Reform Project</td>
<td>1996-2002</td>
<td>$10,700,000</td>
</tr>
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<td>Guatemala</td>
<td>Judicial Reform Project</td>
<td>2003-2007</td>
<td>$33,000,000</td>
</tr>
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<td>Peru</td>
<td>Judicial Reform Project</td>
<td>1998</td>
<td>$22,500,000</td>
</tr>
<tr>
<td>Venezuela</td>
<td>Judicial Infrastructure Development Project</td>
<td>1995-2003</td>
<td>$30,000,000</td>
</tr>
<tr>
<td>Venezuela</td>
<td>Supreme Court Modernization Project</td>
<td>1998-2001</td>
<td>$5,000,000</td>
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</table>

8. **The objectives and indicators of the first group of eight World Bank-financed justice projects often failed to recognize the impediments in the sector policy framework and tended to be overly optimistic.** As the Bank was entering into a new sector, it is understandable that in an effort to gather broad support from a large
number of stakeholders, some projects were based on overtly optimistic assumptions (See Annex I of Volume II). The pilot approach also prevailed. The “Learning and Innovation Loans” (LILs) financed in Argentina, Colombia and Venezuela (Supreme Court) were designed as pilots that could test some innovative micro approaches in spite of the obstacles in the policy framework posed by variables beyond project control. However, only the Colombia LIL could be mainstreamed into a full-fledged investment/technical assistance project as the policy framework (after some legal reforms) was more conducive.

9. The first World Bank-financed justice projects responded to client demand but their impact fell short of expectations. The results of the first eight Bank justice reform projects in Latin America were generally modest in pursuing broader rule of law objectives. For almost fifteen years these projects addressed the demands of national judiciaries and recorded some improvements but were not sufficient to produce a sustainable change. In accordance with the Bank’s internal evaluation methodology, results were not rated highly, mainly due to overpromising on outcomes. In general, project designs were not realistic enough about the obstacles posed by the sector policy framework to reach the intended targets. The Guatemala project is notable for its huge size and ambitious design compared with the limited results. More focused operations like the ones in Venezuela (Supreme Court) or Ecuador were able to deliver more tangible results.

10. Reformers and donors had limited capacity to pursue deep reforms with project tools while facing serious political/institutional constraints. A number of justice reform efforts in Latin America have run into the walls of bureaucratic indifference and entrenched interests, the case of criminal justice reform in Chile and Costa Rica being a notable exception. The menu of potential intervention areas remains wide open; while court administration and case management have shown some progress, there were still serious issues of court efficiency, service quality, and limited access. One of the main challenges for donor-financed projects is to make the right choices for components/activities that reduce the complexity of design and implementation and have a good chance of overcoming the non-technical obstacles to reforms. World Bank-financed projects were not an exception; most ex-post evaluations agreed that while the projects benefitted from some of the overall reform trends (for instance, higher budgets and better staff) and helped reinforce them (as in the case of the Bolivia project that financed new institutions), most fell victims to variables beyond their control (such as executive interference with judicial independence, in the case of the first Peru project or political infighting as in the case of the Bolivia project and several others).

8 A separate but closely related note “Justice Reform Projects in Latin America: Results Review” provides greater detail on each of the projects considered for this review of lessons learned.
9 However, it should be noted that these promises and unclear results frameworks were also reflective of the development practice at the time; it was only later that M&E and rigorous results frameworks came to such prominence. More recent operations reflected these changes (see World Bank, Colombia Justice Services Strengthening Project, Project Appraisal Document, November 6, 2009).
10 For more information on this subject see, Hammergren, Linn. Envisioning Reform. Improving Judicial Performance in Latin America, 2007
11. **In spite of the shortcomings, with the help of donors, justice reform in Latin America gained traction.** International donors have continued support investment and technical assistance projects in the justice sectors. Most projects, irrespective of objectives, target areas and performance indicators, have had mixed results. While outputs related to modernization of court administration and case management have advanced, questions remain about the degrees of institutional strengthening and sustainability achieved. However, even limited results have been very useful in generating additional demand for reforms from outside stakeholders, and in mobilizing support from previously passive actors in the private sector and civil society. The presence (or absence) of external donors also signaled the international community’s interest in the continuous improvement of governance institutions. The Bank’s decision to cancel the first Judicial Reform Project in Peru due to concerns about interference with judicial independence represented a major breakthrough in the traditional multilateral/country relationship around rule of law programs (with a major role given to civil society organizations) and set a higher standard for projects to be measured in this area.

12. **Investments in infrastructure could be linked to institutional development components around concepts of service delivery.** Most, but not all, of the Bank’s first eight projects included civil works for the refurbishment of dilapidated court buildings. All had significant investments in the adaptation of the infrastructure required for the operation of modern information and communications technology (ICT). The infrastructure investments were not in a vacuum but accompanied institutional development activities (legal and regulatory reforms, integrated management systems, capacity building) that used infrastructure as a tool for service delivery. While some were more successful than others, none was exclusively focused on infrastructure, (not even the Venezuela project that had “infrastructure” in its title). Infrastructure was seen as another tool to improve service delivery and address user demands for enhanced quality, not as an end by itself. Some internal evaluations (like that of the Venezuela Judicial Infrastructure Project) even recommended that the Bank should be ready to finance the construction of courts and other buildings (not only refurbishment) in justice reform programs.

13. **None of the first eight World Bank-financed projects worked directly on criminal justice reform, a preferred area for other donors.** The initial rationale for Bank-financing of justice projects was limited to their furtherance of economic and social development, with a focus on increasing the efficiency and efficacy of commercial dispute resolution and contract enforcement. A longstanding policy debate has prevented the Bank from contributing to criminal justice reform, a vital area of the rule of law that has made progress throughout the region with the support of other donors. The inability to contribute directly to this area has forced the Bank to focus largely on areas whose reform, while perhaps equally important, lacks the urgency of improving criminal justice. While the evidence that economic growth can be leveraged by improvements to civil or commercial justice is inconclusive (all the information available relates to perceptions of businessman only), the impact of crime and violence on economic performance has been estimated at an average 3.7% of sales for sales for businesses and around 9% of GDP in
five Central American countries. These figures may provide a strong rationale for concluding the policy debate around the areas of criminal justice the Bank can support pursuant to a legal opinion of the Bank’s General Counsel.

14. **Overall, the Bank’s experience with justice projects yielded valuable lessons learned on component/activity design and implementation, and the link between the micro and macro levels of the sector.** Chief among these is the fact that justice sector reform remains a critical aspect of good governance, and sector reform is necessary because of its broader links to economic and social development (although the particular arguments for its direct impact on private sector development have proven largely insufficient). In the fifteen years since the first Bank-financed project in Latin America, the development community has taken a broader view in defining key stakeholders that now include academics and civil society organizations. During that same period, there has been an increasing emphasis on monitoring and evaluation of projects (including those in the justice sector) and the view that justice sector institutions, like many other public institutions, exist to serve the population and, therefore, must be more responsive and accountable to their citizens. Not surprisingly, these shifts in thinking are reflected in assessment of the projects mentioned above and will inform future efforts in the sector.

### III. LESSONS LEARNED FROM PROJECT DESIGN AND IMPLEMENTATION: CONNECTING THE MACRO-POLICY AND THE MICRO-PROJECT DIMENSIONS OF THE JUSTICE SECTOR

A. **Ensuring consistency between the sector policy framework and project objectives**

15. **Conduct a realistic assessment of sector issues early in the preparation process even if this means delaying responses to assistance requests.** Project design should be based on a solid institutional assessment process that engages a range of justice sector stakeholders, not only justice operators. The assessment must look carefully into the political economy and include clear identification of possible implementation obstacles. The absence of a previous assessment was a central issue for the Venezuela Judicial Infrastructure Project; it delayed project start-up and forced major changes in design along the way. The Argentina, Bolivia, Colombia, and Guatemala projects were also affected by weak institutional and political economy analysis. Under difficult sector circumstances, an inadequate risk analysis with an unclear grasp of the implementation constraints and political will may become particularly costly, as the case of the first Peru project suggests. Justice projects need to recognize a number of critical, exogenous variables in their risk-management model: (i) understanding of, and commitment to, project scope and concept by the justice sector authorities and operators; (ii) levels of independence in the Judiciary and other sector institutions; and (iii) likely support or opposition from other important stakeholders. At the micro level, project design should

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12 World Bank, Senior Vice President and Group General Counsel (2012) *Legal Note on Bank Involvement in the Criminal Justice Sector*; see also World Bank, Justice Reform Unit, Legal Vice Presidency (2012) *Staff Guidance Note: World Bank Support for Criminal Justice Activities*. 
consider: (i) sustainability mechanisms; (ii) realistic time frames; (iii) periodic evaluation plans; and (iv) intensive supervision with appropriate budgets.

16. **Avoid raising stakeholder expectations, and acknowledge policy constraints upfront.** Reform leaders should be aware of the risk of setting standards too high and of creating unrealistic expectations about what can be delivered. Generally, projects with ambitious national coverage (like the first Venezuela [Infrastructure] and the Guatemala projects) are less likely to reach their goals, while the projects, with a more modest scope (e.g. Colombia and Ecuador) are able to achieve a few deeper changes, although on a small scale. In Guatemala, expectations were set very high for a country that was just emerging from a serious armed conflict and had little implementation capacity. Project scope and objectives must therefore be kept modest and realistic. In countries where there is no strong tradition of an independent judiciary and where a reform project would perform be implemented in a potentially unstable environment, the expectations of catalyzing the reform process should be carefully managed. The use of short and medium term investments to promote long-term policy reform proved unrealistic in most of the early Bank-financed projects. Where conditions are not ideal, proper design requires a candid assessment of the policy framework, the exogenous variables they cannot control, and of the measures that can help work around them (for instance, even where independence is compromised, some work may be possible in less politically sensitive areas like justices of the peace or basic justice modules, as it was done by GTZ and the IDB in Peru in the 1990s, or with the “judicial facilitators” currently sponsored by the OAS in Nicaragua and Bolivia).

17. **Structure the project around a problem-solving strategy and engage all the actors required to implement a proposed solution.** Demands for assistance should be analyzed under a problem-solving framework that looks at the functions to be improved and the services to be delivered. Justice projects working with multiple institutions should provide some flexibility to manage risks at the expense of consistency in outputs, as the Bolivia project suggests. Healthy competition can result: if one actor does not respond, others may detect opportunities of their own; if one actor does not perform, resources may be re-directed to others. Apart from the Bolivia project, the World Bank projects concentrated the main efforts on the judiciaries, and in some instances this central institutional actor lacked the commitment to advance reform. The Judiciary is clearly critical to overall reform, but is not the only actor. Insufficient analysis of the complex institutional incentives can also hobble a project with an old-fashioned “Christmas Tree” design (a shortcoming affecting most of the projects in this group). Rather than being structured around institutions, components and activities should be articulated around service delivery improvements. i.e. practical solutions to particular problems (for instance, seeking to ensure that no simple civil case takes more than a year to be resolved) and try to involve all the justice sector actors in a particular field or regional areas where the problem is to be solved (coordination that should take place at the local or state level, in particular in federal systems). Solutions may require working not only with the Courts but also with a range of other actors such as Public Defenders and Prosecutors (for instance, to resolve criminal cases that have suspects in detention for more than six months). Universities, law faculties and other civil society actors may
make contributions to the solution of labor and family conflicts outside of the court system.\textsuperscript{13}

18. Select relevant impact and performance indicators, with the appropriate monitoring and evaluation tools, preferably those that facilitate international comparisons. Justice projects must use an appropriate set of impact and performance indicators, baseline statistics, and monitoring and evaluation mechanisms to collect the required information from the project’s outset, plus an agreed reporting schedule. The Colombia and Ecuador projects developed their own case-tracking systems featuring limited statistical modules that helped to measure court performance but lacked appropriate baseline/control groups. The absence of a good set of indicators made it difficult to evaluate performance and impact in other projects like the ones carried out in Bolivia, Guatemala and Venezuela. As an integral element of good governance, justice reforms need reliable and pertinent data to measure institutional performance and account for public resources to citizens. In this area serious challenges remain. The first is conceptual: definitions of improvement are both quantitative and qualitative, and the internal and external perceptions about change are often as important as the change itself. Measures of qualitative improvements tend to be particularly difficult to articulate (typically through user surveys). Another key challenge may be political; decisions must be made about what is measured and what is not, and will be affected by whether the organizations involved are ready to provide the data and use them. Project design should consider these challenges upfront and not leave them for solution along the road. Alignment with statistical standards adopted by CEJA or CEPEJ is highly recommended in order to facilitate international comparisons, but projects may want to track other types of improvements these systems do not include while data collection in some countries makes difficult to generate the recommended statistics.\textsuperscript{14}

B. Interacting effectively with other players

19. Build solid internal and external coalitions, including civil society’s participation at all stages of design and implementation. Through the advocacy role of civil society organizations, citizens are given a voice in the process of formulating public policy in the area of justice reform. To strengthen these constituencies, projects need to work with bar and other professional associations, law schools and other organizations that may be in the forefront of reform efforts, or can take advantage of reform opportunities. Inclusion of civil society in the Venezuela and Ecuador projects was the right choice to this end. Coalition-building should include allies from both inside and outside the judiciary, such as judges, members of professional associations, advocacy groups, business associations, and the media. Even where a Supreme Court or Ministry of Justice is supportive of reforms, opposition may arise that official organizations are not in a position to counter. These engagement efforts must be sustained, for instance maintaining a permanent dialogue with civil society organizations through a dedicated expert project staff member (as happened in the Venezuela projects).

\textsuperscript{13} The Bank’s institutional development fund financed a project with the Peruvian Ombudsman after the cancellation of the first judicial reform project (see Volume II, Annex III, on other Bank financed justice operations in Latin America).

\textsuperscript{14} The UN is developing indicators for justice reforms in less developed countries.
20. **Engage executive and legislative branch officials early on in the design stage as essential allies.** The fact that the country’s Judicial Branch is the central focus of a project should not exclude various levels of engagement by the Executive or the Legislative Branches. Judicial independence and legal reforms require the participation of all three branches. In particular, the support of the Ministry of Finance (or equivalent institution like the Planning Department in the case of the Colombia project) can be critical for reforms that have budgetary implications. The case of the Ecuador project demonstrates the advantage of an early engagement of non-judicial justice sector players. Inter-institutional justice sector commissions, which would include representatives of many of these agencies, can provide effective fora for vetting reforms, building support, and coordinating reform efforts, as the cases of the Ecuador and Colombia projects suggest. Additionally, the involvement of relevant committees of the national legislature in the passage of essential legislation is often essential to achieve project goals related to the establishment and operation of new institutions, as was anticipated under the Bolivia project.

21. **Select implementing agencies based on an assessment of their leadership and technical capabilities.** Quality-at-entry should specifically include a micro assessment of the executing agency’s implementation capacity and commitment to reform. Some of the Bank projects reviewed were allowed to proceed on the implicit assumption that external resources can overcome questionable internal will to reform, lack of leadership commitment, or insufficient institutional stability. In Argentina, for example, the Project might have delayed start-up because of the anticipated changes to the Judiciary’s governance structure as a result of the establishment of the Judicial Council. Similar problems existed in the Bolivia and Venezuela (Infrastructure) projects, and caused both of these to fall short of their goals; some components were delayed, and results largely downgraded. It is vital to understand the roles of major players, as well as the resources and interests of those who might potentially support reform or could stand to benefit from retaining the status quo.

22. **Establish a strong PIU to facilitate project implementation but envisage gradual transfer of capacities to the line agencies.** While in areas (for instance, social sectors) with a long tradition of multilateral assistance, the ideal arrangement is that line Government agencies implement Bank-financed projects, that option may not be feasible in sectors like justice with limited experience in the management of international cooperation funding. Specialized PIUs staffed by experts with strong technical and professional qualifications remain the standard implementing arrangement and that situation is unlikely to change in the near future. As the case of PROJUSTICIA in Ecuador suggests, PIUs can provide continuity and credibility to implement projects or enlarge project scope. Thus, one of the most critical decisions in a justice project is the definition of the role, profile and skills of PCU staff, the adequate level of autonomy and its position in the institutional network. There is no need for the highest levels of the reforming institutions to be involved in matters that can be solved at a lower level (as the Colombia project clearly showed). Nonetheless, PIUs should not be seen as a permanent solution but only as an interim mechanism. In the mid-to-long term a gradual transfer of implementation capacity and responsibilities to line agencies should take place; thus, PIU “mission-creep” (absorption of a still greater number of functions that line agencies
should and could perform) is to be avoided. In some cases, sector institutions should consider the establishment of permanent international cooperation units or offices staffed with regular staff\textsuperscript{15}.

Face the challenge of donor coordination candidly from the inception of project preparation. Historically, donor coordination in the justice field has been poor and turf battles among international donors are not uncommon. Nevertheless, where it has been successful, donor coordination not only reduces duplication of efforts and unnecessary and counterproductive donor competition, but also prevents donors being misled on sector priorities by opportunistic local stakeholders. None of the World Bank-financed projects reviewed revealed any clear emphasis on donor coordination. Nor could the review conclude whether this was by accident or by deliberate policy decisions. The fact is that most projects (with the notable exception of the Ecuador and Guatemala where the same PIU managed other donor operations) went ahead with minimal or no coordination. This might have been a valid strategic choice, dictated by the particular country or sector circumstances. However, as the case of Ecuador exemplifies, Bank-financed projects may have higher chances for success if they are a part of a larger donor support program. Discussion and coordination of aid among donors can be better conducted at the country program level to deal with policy issues; however this is by no means automatic and require significant efforts from all the parties involved.

Consider mechanisms of “in situ” supervision to enhance flexibility during implementation. A rapidly evolving situation may create new opportunities critical to overall success. Windows of opportunity may emerge that offer the potential for quick results. Lack of flexibility in project implementation was a main issue in the Bolivia and Argentina projects. In other projects, the permanent presence and direct oversight in the field by World Bank teams could have had a positive impact. The intermittent nature of traditional Bank supervision was not sufficient to maintain the momentum for reform in the mid-to-long terms or to catch and resolve emerging problems. A World Bank project supervisor or team member based in each resident mission of a country with a justice project, ready to monitor implementation, build working relationships with implementing agencies, and take advantage of windows of opportunity would have made a difference. It is unlikely that Washington-based staff, travelling to the country a few times a year, can generate a sufficiently dynamic relation with multiple country stakeholders to be able to adapt the project quickly to changing circumstances or to exploit opportunities to improve results. The in situ supervision staff should have the authority to monitor the policy and project dimensions of reform, meet frequently with responsible agency staff, and quickly identify a structural or political problem that may impact project performance, and make or recommend management decisions. The lack of that local presence in Bank projects contrasts with that of other large donors (USAID, IDB, UN, EU) that have large supervision teams in the field and (in spite of other common shortcomings) record better ratings in the quality of supervision.

\textsuperscript{15} PROJUSTICIA took this role in Ecuador and now, as a unit within the new Ministry of Justice and Human Rights coordinates all donor actions, even those it does not implement directly.
C. Designing well-focused components/activities

25. **Select the project geographical or thematic area to maximize response to justice services demand.** As it is not possible to cover the full territory of a large country with a single operation or address various thematic areas (civil, commercial, labor, family, administrative, criminal) at the same time, decisions on geographical or thematic areas should be driven by a factual analysis of service demand. The wave of crime and violence that affects economic development in several Latin American countries requires that justice institutions develop cross-disciplinary strategies that include preventive and repressive measures. Criminal justice remains one of the most critical areas of every justice sector, and actual and perceived crime levels directly impact citizens’ trust in sector institutions.

26. **Include access to justice components in public sector projects provided an appropriate interface between justice institutions and the social actors is in place.** The World Bank’s first justice reform projects did not devote enough attention to the social dimension of justice and concentrated efforts primarily on institutional strengthening of the Judiciary, probably because as a public sector agency it was a traditional client as opposed to “new” clients in the social sector. One notable exception was the Venezuela Judicial Infrastructure Project that financed a “Voices of the Poor for Access to Justice” survey and supported the implementation of the Law for the Protection of Children and Adolescents and the Law for the Prevention of Violence against Women and Family. Another interesting example was the integrated service model adopted for the NGO-implemented legal services pilots in Ecuador that allowed women to know their rights and provided tools to exercise them. The Guatemala project also included a significant court-annexed mediation component as well as mobile courts to take justice services to poorer urban and rural areas. Apart from these cases, the earliest Bank-financed justice projects only made limited attempts to enter into the access to justice area. While attention to this element is a vital piece of any intervention designed to reduce poverty and strengthen democratic governance, strategic choices have to be made during design that may result in a project focusing on public sector management and designing separate instruments to address access to justice issues.

27. **Develop self-standing projects that address the social dimensions of justice when conditions are not suitable for a full-fledged public sector project.** Democratic governance may be undermined where access to justice for all citizens (irrespective of gender, race, religion, age, or class) is limited. Within the broad context of justice reform, projects that increase access to formal and informal justice mechanisms, especially for the poor and other marginalized groups should be a priority in countries that are not ready to start full-fledged institutional reforms, typically medium-low income countries. Empowering the poor and disadvantaged to seek and obtain remedies, strengthening linkages between formal and informal structures, and countering biases inherent in both systems can provide access to justice for those who would otherwise be excluded. Access to justice is also closely linked to poverty reduction, since being poor

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and marginalized means being deprived of choices, opportunities, basic resources and a voice in decision-making. Access to justice initiatives include administrative protection of legal rights, popular legal education, legal aid, public defenders strengthening, protection of victims and witnesses, establishment of ADR mechanisms inside and outside the court system, and establishment of neighborhood or rural Justice Houses or Peace Centers. Grant financing may be ideal to explore innovative solutions for these problems, as stand-alone operations financed by grants in Colombia and Ecuador suggest.\textsuperscript{17} Grants typically can pilot approaches that can later be rolled out in loans.

28. \textbf{Consider a communication strategy to ensure the project is not only a vehicle of change but is also seen as such.} The media are not a natural ally for justice reforms and the obstacles to building media support should not be underestimated. In some countries, the mass media may be controlled by powerful elites opposed or indifferent to justice reform. Often, journalists, like the public, do not fully understand the justice system or the proposed reforms, and do not know how to make them a marketable news or opinion topic. Nevertheless, engagement of the media can bring some benefits for project implementation, as the experiences of the Bolivia, Colombia, Ecuador and Guatemala projects suggest. Under the Colombia project, seminars brought together judges and reporters, and changed minds about the nature and benefits of reforms, as well as persuading judges to make more information available to the public. Regardless of whether the media in general engage in the topic, building project support should seek to draw at least some media outlets into the process so that they identify the reforms as a public policy issue, provide periodic information on the progress of the reform efforts, and generate demand for transparency. Surveys of judges and users carried out by credible organizations (sometimes on an on-going basis) can be an effective tool to develop a media strategy, direct public information efforts, or coalition-building, as was the case with the surveys financed under the Colombia project. They also are an excellent means of providing courts and other institutions with feedback on their efforts.

29. \textbf{Ensure that automated case management systems (CMS) are used for quality control, statistical analysis, and the conversion of project results into policy reform proposals.} Several judiciaries in the region have already adopted CMS software, but with limited impact due to some confusion as to their principal purposes and use. CMS software is only a means to an end. Case tracking systems are first and foremost a management tool, but they can bring transparency to court operations, reducing the opportunities for corruption and ensuring accountability. At the heart of the CMSs, its primary functionality is the development of a good database on all case events. As the shortcomings found in the Colombia and Venezuela projects suggest, case management systems require certain minimal standards at the design and implementation stages:

a. \textbf{Design:} (i) a thorough initial assessment to identify priority problems and opportunities in case processing and an early effort to reengineer some processes before automation; (ii) a connection between the desired objectives and the system design and functionalities; (iii) a cost effective use of consultants from initial assessment through

\textsuperscript{17} The Japanese Social Development Fund administered by the Bank has financed large grants for access to justice in Colombia and Ecuador.
design, implementation, and follow-up;

b. Implementation: (i) an understanding that automation, while an appropriate response to high-volume operations, does not alone fix any problems (it needs to be used for this purpose, by work unit staff and by management); (e) modular development, appropriately designed databases, and data entry controls; (f) the creation of help desks and the expansion of ICT staffing; (g) adequate training of operational staff and engagement of the leadership for them to understand and use the data; and (h) an accurate determination of all system costs, both initial and recurrent, plus a reasonable assurance of availability of sufficient funding after the project is over.18

30. Support infrastructure refurbishment provided that it is linked with changes to core management processes and functions. While justice institutions certainly need modern buildings, equipment and ICT technology, the essence of justice sector reform is institutional change. It demands changes of court’s administrative and managerial culture, replacement of obsolete procedures, reengineering of internal processes, and easy access by the citizenry. The World Bank quickly learned this lesson, and with the experience of the infrastructure project in Venezuela, subsequent projects increasingly included and emphasized substantive elements of reform. In addition, where infrastructure and equipment are incorporated into a project, there should be specific linkages and conditionality that relate these inputs to the normative, administrative and procedural reforms. The old assumption that large infrastructure investments can generate incentives for institutional reforms proved radically wrong in the case of the Peru project that was cancelled when it became clear that no real commitment to reform existed. In other cases, such as the Venezuela Infrastructure Project, positive changes could have been done even without the infrastructure. Project design should ensure that infrastructure and equipment do not divert attention from making the internal process reengineering happening.

31. Tailor funding to the nature of project deliverables and the capacity of the implementing agencies. Deficient capacity of PIUs was a common denominator of most of the Bank justice reform projects reviewed (with the notable exception of the PIU for the Ecuador Project). In general, judiciaries do not have experience with project management. Justice reform projects that do not include significant infrastructure and large equipment purchases will have great difficulty in spending several million dollars a year when divided among a number of small contracts (as the cases of the Bolivia and Ecuador projects suggest). More focused projects (like the Argentina Model Court and Venezuela Supreme Court Project) are usually much easier to manage and supervise and permit the implementing institutions to learn how to deal with the Bank and how to take ownership of reform processes. Courts and other sector institutions need to plan and manage their own reforms beyond the project level of courtroom administration. These two aspects of justice sector agencies’ overall management should be fully developed for reforms to be sustainable.

32. Consider the impact of, and possible entrance into, areas of emerging importance where engagement by other donors has been limited to nil. The potential for Bank engagement in criminal justice has already been mentioned, but there are several other areas that promise an increasing impact on reform programs and the objectives they seek to advance. Three in particular are: administrative justice, indigenous justice, and constitutional justice. Administrative justice may be the least controversial, and it also has a decided effect both on the business environment and general social welfare. It involves both the usually inadequate provisions for administrative resolution of disputes and their consequently frequent transfer to the courts for judicial remedies where they add to congestion and costs. In many countries, litigation where the government is the plaintiff but more often the defendant has become a major source of increasing demand and its handling is commonly extremely inefficient. Indigenous justice involves more controversial themes even in countries (e.g. Colombia) where the indigenous groups represent less than 1 percent of the population: the recognition of indigenous dispute resolution mechanisms, their relationship to the formal justice system, and conflict of jurisdiction issues, as well as the handling of indigenous peoples’ claims to land and land use. Constitutional issues are the most complex and variable, but in their most extreme form threaten further conflicts about the balance of powers as constitutional courts and chambers prove increasingly willing to strike down laws or order governments to adopt new policies. Because many countries have introduced special, fast-track constitutional writs, there is also a growing tendency for 1) parties to attempt to “constitutionalize” their disputes and so get quicker remedies, and, ironically, 2) litigants seeking to delay justice to add a claim of violated due process rights wherever possible in the processing of an ordinary case. In the first case, quicker remedies for constitutional cases unfortunately means more delays for ordinary ones. While some constitutional issues may have political implications, efforts to speed up handling of normal civil and administrative disputes could be one way of helping countries combat the tendency to send most cases to the constitutional jurisdiction.

D. Determining the right timing and sequencing of project interventions

33. Postpone project start up until the aspects of the sector policy framework that makes the achievement of project objectives likely is in place. In rule of law projects, timeliness is of the essence. Even a well-designed initiative that is not launched at the right time may be doomed to fail. Pressure to finalize project preparation is a typical feature in operations financed by donors, coming either from interested Government counterparts or from the internal bureaucratic dynamics of the donors. In Peru, the World Bank’s decision to suspend Project start-up proved to be the right choice a few years later. In this case, the Bank resisted strong pressures to go ahead with a

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19 Brazil has created special federal small claims courts to handle pension disputes, an estimated 75 percent of which only involve the social security agencies’ miscalculation of benefits. The courts are highly automated and thus can process claims quickly, but the question remains as to whether the courts should be redoing the administrators’ work for them. The solution is unique to Brazil, but the problem is growing elsewhere for much the same reason – a non-service culture on the part of administrators combined with a need to “control the cash flow,” a term increasingly used by Brazilians to describe the origins of the problem (World Bank, 2004).
project that would have failed to support central principles of donor consensus on justice reform in Peru and possibly would have been captured by anti-reform elements. This decision to stop the project provided high returns during the democratic transition of 2000-2001 and led to a new operation between 2004-2010.

34. **Phase individual components/activities in a way that facilitates tracking results and adapting to policy changes.** Justice reform is a vast area, with many overlapping layers of legal, political, technical and managerial issues that range from the broadest “macro” level of balance of power issues through the mid-range procedural code provisions into the minutest “micro” details of courtroom operation. Most of the Bank projects reviewed tried to cast a large net over a variety of sector issues, instead of focusing on a set of key interventions that had strong forward and backward linkages to the most problematic areas. To succeed, justice projects should rather focus on specific short-term goals, while supporting long-term policy reforms. Projects should seek to identify problems that can be addressed immediately without changes to legislation, and that generate tangible benefits for users to build a supporting constituency and increase the chances of sustainability. Small projects, such those carried out in Argentina and Colombia, can help clarifying the prerequisites for larger justice reform interventions. A discrete component on ADR or women/children’s rights in the Ecuador project had higher impact.