

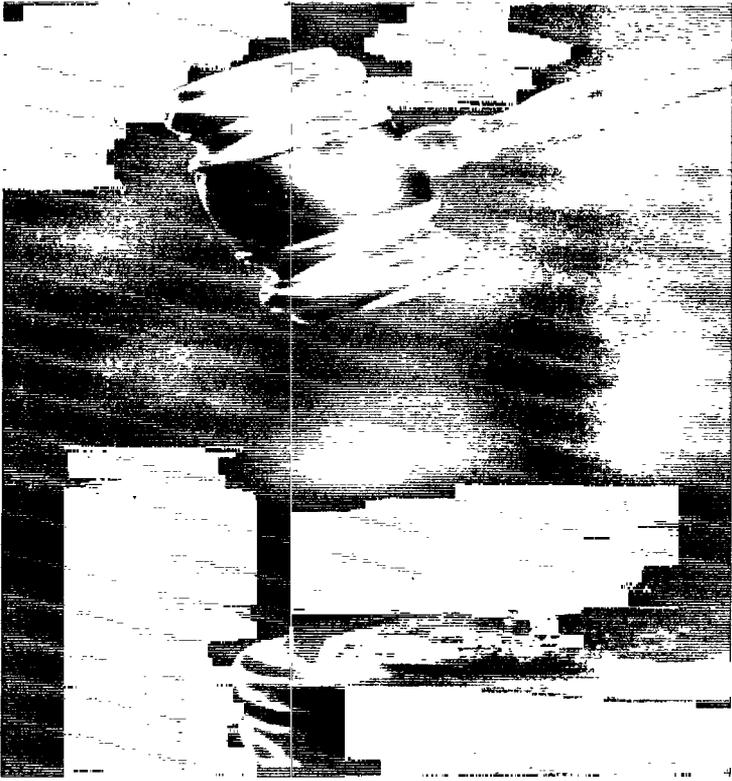


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Colombia

Modernization of the Itagüí Court System

A Management and Leadership Case Study



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Colombia - Modernization of the Itagüí Court System

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Foreword

IMPROVING court performance and access to fair and efficient dispute resolution are goals for legal and judicial systems throughout the world. However, legal and judicial reform initiatives differ from country to country, and may be particularly challenging in places such as Colombia, where problems are further compounded by political unrest. While judiciaries are often resistant to change, judges in Itagüí, Colombia themselves assumed responsibility for initiating court reforms, with the support and assistance of both the public and private sectors, to better provide a fair and efficient service to society.

In an effort to support the rule of law, the international community often assists legal and judicial systems to respond more effectively to demands for improved delivery of justice. However, the Itagüí Court reform, which was initiated and funded entirely by local resources, serves as an important reminder that locally-led initiatives often provide valuable lessons and examples of innovative and sustainable solutions for the international community as well. This public-private partnership, which applied a long-term strategic management approach, demonstrated the importance of institutional commitment and coordination among the public and private sectors to achieving lasting and effective reforms.

Under the Itagüí Court reform, committed judges and staff developed a strategy based on common management techniques and an awareness of the courts' role to deliver justice within the existing legal framework. Building upon a study initially commissioned by two private foundations, the Colombian Judicial Council and Supreme Court supported a program to assist the Itagüí Courts to become "the most effective tribunals in Colombia", contributing to social development and peace. The Itagüí Court reform aimed to generate a positive image in the judiciary and recover citizen trust by improving court performance through an effective case management system, a judicial support office, refurbished court facilities, better trained personnel, modern management techniques, modern technology, improved case management, updated court libraries, and most importantly, a renewed culture of service. Initial results have shown that more than ninety-percent of the users now rate the court system as "good" or "very good", citing increased staff knowledge on key administrative and operational issues, improved judicial performance, and reduced court congestion.

The Itagüí Courts implemented common management techniques to stimulate an "internal change engine" to promote innovation under the leadership of judges. As a result, the Itagüí Courts can confront new challenges better than other Colombian courts. This pilot is an important example of the successful use of management techniques to improve judicial service delivery, which complements efforts to achieve a legal and judicial system that is comprehensively efficient, effective, and accessible. The Itagüí Court reform also reinforces legal and judicial reform experiences throughout the world by demonstrating that such reforms are a long-term process and must respond to internal needs. This successful pilot program has served as a model not only within Colombia, but also for other countries in Latin America. One of the objectives of the Legal and Judicial Reform Practice Group is to highlight and

share successful efforts to promote legal and judicial reform. Perhaps most importantly, the Itagüí reforms have provided an opportunity to stimulate national reforms in Colombia, that are now being implemented under the Judicial Conflict Resolution Improvement Project financed by the World Bank.

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Colombia

Modernization of the Itagüí Court System

A Management and Leadership Case Study

Introduction

DURING the past decade, many lessons have been learned about judicial reform in Latin America. Whether financed by national budgets or with the technical and financial assistance of institutions such as the United States Agency for International Development (USAID), the Inter-American Development Bank (IADB), and the World Bank, governments and judiciaries across the region have designed and carried out judicial reform programs and projects. To varying degrees, all Latin American countries have embarked upon reforming their judicial systems.

Legal and judicial reform is a means to promote the rule of law. Judicial reform projects usually involve a number of components. These include: modernizing legal frameworks, establishing or strengthening justice sector institutions, restructuring ancillary institutions, introducing accusatory and oral criminal trial procedures, improving legal education, and modernizing court administration practices. The focus and impact of these projects depends largely on the needs of each country, the progress of a justice system to-

ward its intended objectives, the priority allocated to specific needs, and the financial support provided by international development institutions. Some of the complementary reforms take into account programs implemented by the Executive or Legislative Branches to modernize state institutions.

This paper is a case study of the management modernization process followed in the Courts of Itagüí, Colombia¹ and describes an innovative court management initiative that allowed a traditional court model to become more effective.² The Itagüí initiative began as a court administration management improvement project, and produced an impact that extended well beyond the boundaries of its court system. Using a comparative framework, this paper highlights the Itagüí initiative's primary components, connects them to critical aspects of international public sector modernization standards, and compares them to similar experiences in Colombia.³ This paper also shows that the application of organizational change management concepts underlies much of the success of the Itagüí initiative.

In the first chapter, general information regarding the project's first phase and its social environment is provided. The second chapter presents a conceptual overview of successful public administration modernization processes and highlights issues related to the Itagüí project. In the third chapter, specific data related to the project is discussed in relation to the conceptual overview. Conclusions and lessons learned are presented in the fourth chapter.

¹ The city of Itagüí is part of the Metropolitan Area of Medellín, capital of the department of Antioquia. It is the most densely populated area in Colombia with approximately 220,000 inhabitants, plus a floating population of about 50,000.

² A detailed characterization of "traditional court office" or "modern court office" is not intended in this paper; main features, however, are discussed through examples.

³ See Dakolias, Maria and Javier Said. "*Judicial Reform: A Process of Change Through Pilot Courts*", World Bank, Washington, 1999.

Overview

Legal Framework

For decades, Colombian judicial services have been plagued by congestion, poor performance, and unequal access. These conditions have been attributed not only to state organizational failures, but also to the growth of crime and terrorism fueled by narcotics trafficking.

Several legal reforms have attempted to address court performance and improve justice service standards. Among them, Law 30 of 1987 permitted the establishment, merging or elimination of tribunals, the definition of new roles for judicial staff and the simplification of judicial processes as well as the incorporation of modern technologies.⁴ Decree 2278 of 1989 modified the Organic Law for the Administration of Justice, and among other things, empowered local judicial authorities to determine the roles and responsibilities for administrative staff, internal procedures, resource allocation and the standardization and automation of administrative processes. Decree 2287 of 1989 authorized the establishment of Centralized Secretarial Offices which were assigned additional administrative responsibilities.⁵ The Medellín Superior Court, 'through Resolution 158 of 1990, authorized the administrative merger of the secretarial offices of the tribunals of Itagüí into a Judicial Support Office (*Oficina de Apoyo Judicial*).

After the Constitutional Reforms of 1991, the Colombian justice system was completely overhauled and a sustained process of institutional change was initiated. Substantial efforts have been made to deepen the changes required by the current system to make the judiciary fully responsive to societal demands for justice service delivery.⁶ Among its most innovative provisions, the Constitution established the Supreme Judicial Council to oversee the judiciary's administrative and disciplinary activities. It also created the Attorney General's Office which is responsible for the investigation and prosecution of criminal cases.⁷

⁴ Arbeláez de Tobón, Lucía. "Administrative model of the tribunals of Itagüí", working paper, Itagüí, 1992.

⁵ Publication of the Municipality of Itagüí, 1996.

⁶ "New forms of administration Cooperation between the local government and organized citizens", Fundación Corona, 1997.

⁷ Corporación Excelencia para la Justicia, working paper, Bogotá, 1997.

Initial Stages

State agencies in Colombia, particularly in the Department of Antioquia, have been receptive to cooperation and partnerships with the private sector for effective problem-solving. A publication by the Corona Foundation entitled *New Management Approaches* examined seventy-three social development initiatives before featuring nine introduced jointly by Government officials and private sector organizations. The article notes that, "the process is in motion and despite difficulties and imperfections, governments, entrepreneurs, non-profit organizations and citizens are starting to shape a new dynamic role in the development process."⁸

One featured partnership, the "Modernization in the Itagüí Courts Project", provides an example of effective coordination and regular linkages between the court system and major stakeholders including NGOs, the private sector, system users, lawyers, and the executive branch. The Itagüí project was based on field research financed by the *Corporación Empresarial de Itagüí CITA*⁹ (The Business Association of Itagüí) which identified the principal problems faced by the community. The study identified the justice sector as a priority given that the credibility, effectiveness and legitimacy of the Itagüí court system were rated "low" by users and non-users alike. The research further demonstrated that 61.2% of the community members surveyed did not have faith in either judges or the judicial system. On the basis of this data and through a joint technical, financial and coordination effort between CITA and the Itagüí Municipality, *Fundación de Educación Superior (FES)*, the Medellín Superior Court and Itagüí Court staff, the first phase of a Modernization Project was designed and launched. This project's objective, in its first phase, was to introduce modern court management techniques to increase public confidence and improve judicial services delivery in the Itagüí Courts.

⁸ See also Osborne and Gaebler. "*The reinvention of government. Influence of the entrepreneur spirit within the public sector*", 1996

⁹ A private foundation devoted to identify, disseminate, and promote successful experiences of cooperation between the local government and organized citizens.

Conceptual Basis

Management experts have identified the principles and elements critical to successful public service modernization initiatives. Taken from international and local bibliographies, we will briefly review some of the concepts applicable to the Itagüí Court Modernization project. These concepts are divided into two groups. The first, project management issues, includes the handling of key political, strategic and financial variables which impact project performance. The second, poses a hypothesis to explain variables centered on the professional team which designed and implemented the project.

Modernization Project Design and Implementation

PUBLIC-PRIVATE PARTNERSHIPS

Partnerships and alliances between local authorities and social actors are one of the most successful strategies to broaden public service effectiveness and to test new Government mechanisms. The assumption that the Government is solely responsible for the supply of public services ignores the active role the private sector can serve. State authorities have found that competing societal demands usually lead to a multiplicity of Government roles requiring enormous bureaucracies. These bureaucracies diminish the strategic vision of policy makers thereby obstructing and limiting the effectiveness of adopted policies.

The traditional state agency concept reflects low innovation and the ineffective delivery of public services manifested by the inability to be responsive to user demands. Not surprisingly, Governments are steadily testing new approaches to public sector management. The challenges of an increasingly demanding and populous society, economic and financial globalization and the exponential growth of communication networks each pose additional challenges and offer unexpected opportunities. Private sector support in social development projects and the privatization of public utilities were part of first generation efforts to adapt state institutions to a new role. Second generation reforms involve the delivery of other public services by individuals and organizations possessing the strategic, operative and financial capacity to address user demands while still expressing state officials to retain their rule-making role to control key issues.

*Quality Approach: A Long-Term Strategic Management Tool*¹⁰

The “Quality Approach”¹¹ has proven to be one of the principal management tools in long-term change projects.¹² Although this approach might initially require the development of appropriate legal frameworks and reengineering exercises, quality management is a forward-looking tool that provides a framework for continuous improvement of a public or private organization. It also represents a valid option to keep a long-term change process alive.

Organizational reengineering must be implemented with special care. Although opposition may arise during the initial call for rank and file views using a “bottom up” approach, a conflict-averse attitude should not risk delaying required changes. In most cases, decisions must be made in consultation with all levels of the organization in order to avoid a “top down” approach in which alienation is rapidly transformed into discontent, a hostile atmosphere, and accusations of authoritarianism. If there is an adequate mix of clarity and consensus regarding who is going to make decisions and how they are going to be implemented, normative changes, reengineering processes and continuous improvement can coexist perfectly during the change project. In the long run, quality management allows the transformation of a modernization project into a continuous organizational change process. In other words, it sets the foundation to introduce a system of continuous improvement in services and processes through an “informal” organization which exists within the “formal” one. This parallel structure, rather than manufacturing a product or providing a service is responsible for generating improvements in processes throughout time and to foster successive innovation and creativity.

¹⁰ See J. Gerald Suárez, “Three experts on Quality Management (Crosby, Deming & Juran)”, 1992. <http://deming.eng.clemson.edu/pub/psci/files/3expert.txt>

¹¹ Also referred to as “Total Quality Management” or “Continuous Improvement”

¹² Colin Morgan and Stephen J. Murgatryd, “Total Quality Management in the public sector”, 1996.

APPROPRIATE RULES AND PROCEDURES

Every public sector organizational change process considers the possibility of changes in rules and procedures either before or during implementation. Public institutions, particularly in Latin America, were conceived under a series of assumptions that may hinder a modernization process and even be used by reform opponents to reject modernization programs from their inception. In the beginning there may be plenty of room for improvement in quality and organizational efficiency with no need to modify the applicable framework. Sooner or later, whether due to counter-productive incentive systems, deficient organizational structures, outdated preparation or administration of the budget, insurmountable obstacles may arise. A change in the rules and procedures becomes a *sine qua non* condition to advance reform.

ADEQUATE SPONSORS

If the appropriate authorities do not unconditionally support an innovative project, the initiative will never gain momentum. A project which has been poorly formulated in technical terms but counts on management support is more likely to be successful than a project which has been superbly formulated in technical terms but is partially or completely rejected by decision-makers. Projects can always be revised and re-defined, but it is very difficult to gain political support from key authorities once they have started. Generally, initiatives with support from the highest levels within the organization have the best chances of success. In such cases, all efforts can be focused on technical activities rather than waste resources building the missing support. Having to build up support after a project has begun not only delays the technical activities but also generates negative feelings within the task team and increases the risk of failure.

EFFECTIVE MANAGEMENT OF ORGANIZATIONAL CHANGE

An organization can make use of a series of tools to increase the chances of success of a change initiative. For instance, public institutions which lacked "bottom line" benchmarks may require ad-

ministration processes different from those of private entities.¹³ This is often the case of public institutions that worked under the assumption that performance was satisfactory because users did not pay for the services they received. Under the assumption that they were doing a favor to society, some institutions have ignored basic management concepts such as customer satisfaction, service quality, and performance indicators. Such institutions may require a change process featuring the following managerial tools:

CLARITY REGARDING INSTITUTIONAL MISSION AND VISION

The institutional mission is the cornerstone of an organization and what society expects from it. In the case of a non-profit organization, mission compliance is the only source of legitimacy vis-à-vis users, staff and supporters. Hence, mission definition and dissemination within and outside the organization is essential.¹⁴ The vision concept reflects where the institution is directed in matters such as customer satisfaction, service quality, interaction with environment, technology and human resources.

STAKEHOLDERS' CONSENSUS

Organizational agreements regarding institutional mission and vision are essential elements underlying support for a project that will lead from the current situation to an improved or ideal one. The simple, and sometimes despised, action of agreeing on "where we are and where we want to be" is a basic pre-condition to advance modernization projects and, at the same time, carry out the organizational routine. To succeed, a critical mass of stakeholders must agree on and be aware of the "navigation chart".¹⁵

GOALS AND INDICATORS

Improvement cannot be demonstrated without measurement tools. Although private institutions are able to apply "bottom line" measurement techniques based on currency or market share, non-profit

¹³ Peter Druker, "Managing the non profit organizations", 1997.

¹⁴ Leiva, Alicia. "Notebook Invertec IGT. Innovation in public administration", 1997.

¹⁵ Kotter, John. "Leading Change: Why transformation efforts fail?", 1997.

institutions may not have such financial statements. For this reason, non-profit institutions require clear goals and indicators that allow them to assess performance. Setting goals and indicators provide a powerful management tool to focus and control day-to-day activities while allowing service improvement.¹⁶ Consequently, in any management innovation project, it is critical that success is expressed in terms of improved management indicators.

THE USER : A CORE ELEMENT OF CHANGE

In all program modernization phases, the core unit analysis and the focal point for solutions and innovations must be “the user” or “the client”. The users’ different profiles must be reflected not only in the organization’s mission and vision, but also in its strategies, indicators and goals. They must also be the focus of innovation process. Users will assess the degree of fulfillment of the institutional mission.

LEADERSHIP AND COMMUNICATION

Leadership is a fundamental element for success in a process of change. Change processes require *new* actions that break theoretically unalterable working schemes. The sentence, “if the top does not run the risk, why should we?” is typical in reform processes. Moreover, one can not expect a task force to carry out a change initiative if an organization’s leaders are not communicating the mission and vision on a regular basis both inside and outside the organization.¹⁷ With the proper mix of leadership skills, management can support the task force during the “low energy” periods and generate the required clarity in moments of confusion which typically become more common as these processes move forward.

PARTICIPATION AND TEAMWORK

It is essential that people involved in project implementation feel that they are part of a team that possesses decision making author-

¹⁶ Druker, Peter. “*Managing non profit organizations*”, 1992.

¹⁷ Kotter, “*Leading change*”, p. 42.

ity. It is also crucial that they be asked their opinions and proposals through participatory mechanisms that promote and gather initiatives at all levels. This approach encourages people to generate solutions to their own problems and builds a sense of “ownership” and belonging to a new organizational reality. This approach has proven to facilitate the smooth implementation of innovative ideas.¹⁸ Hence, it is critical to develop communication channels to foster a creative environment that facilitates improvement initiatives. Key elements include the formal use of teamwork techniques to promote interpersonal relationships and strengthen managerial skills in order to generate a climate adequate to develop and carry on the change process.

WORKING TOOLS

In addition to the technical, physical and financial means to carry out daily tasks, it is essential that change teams have the resources required to conduct the activities inherent to the change process. For example, to work effectively in teams minimum facilities are required to organize productive meetings. It is critical to have a meeting room, adequate furniture, audiovisual equipment, computers and, most importantly, enough time to dedicate to project management activities.

A COALITION FOR THE CHANGE PROCESS

A reform process can be initiated only when more than two-thirds of an organization’s decision-makers are convinced of the need and urgency of important changes.¹⁹ In the alternative, resistance will inevitably arise. Change processes are most likely to be generated by small groups; but if efforts are not made to enlarge this “coalition”, sooner or later those who think differently will join forces to delay or stop the process. In the case of judicial institutions, the profession tends to be more conservative in nature and resistant to change. This factor becomes vital particularly at the time of incorporating judges in the change process.

¹⁸ US office of personnel management, “Case studies and examples (The Employee’s role in team)”, 1996. <http://www.opm.gov/perform/teams.htm#newsletter>

¹⁹ Kotter, “Leading change”, p. 54.

TIME DEVOTED TO THE PROCESS

If the organization's leaders are not prepared to devote fifteen to twenty percent of their time to a change project, it is best not to start. According to experiences analyzed by Kotter, it is critical that leaders and selected second-level managers devote a minimal percentage of time to the process. Modernization will not take place without this degree of commitment and time allocation. A project committee should be established to lead the project, holding regular meetings to solve problems that may arise during implementation. If this committee does not operate or if meetings become scarce or unproductive, it is highly likely the project will fail. The committee could be part of the Executive Management Team of the same organization, or could be composed of other staff, including lower rank employees and outside stakeholders. To the extent possible, team meetings should primarily lead the change process rather than to administrate day-to-day business.

SYSTEMATIC PLANNING OF SHORT-TERM VICTORIES

In the absence of short-term minor victories, some stakeholders may become discouraged or "join the opposition". Achieving "short-term victories" ensures the accomplishment of long-term tasks, and demonstrates strong commitment towards long-term reforms. For this reason, it is critical to inform stakeholders about improvements achieved. One of the enemies of a change strategy is "routine". While everyone is occupied with daily bureaucratic and complex procedures, a new project requires considerable time and energy to be implemented. The adequate planning of "short-term victories" and the appropriate dissemination of results are tools that allow project champions to communicate the vision effectively and generate a positive coalition.

RESULT-ORIENTED TRAINING

In most organizations, training has generally been used to increase employees' knowledge rather than to improve organizational performance. As a result, evaluations frequently have been conducted once training is completed and not when the knowledge is applied. Research demonstrates that training is not effective until the worker

assimilates the acquired skills to improve performance and the skill is applied naturally.²⁰

Recent initiatives require training programs that are closely linked to individual or group performance and to the modernization process. This ensures that the worker focus on acquiring knowledge and skills to perform new tasks. Training is also essential for the modernization process itself. The development of an adequate training plan must generate results independent from state-of-the-art technology and institutional status quo and create a culture of quality and organizational innovation. The trilogy of theoretical training, application of acquired knowledge and success allows the generation of a new capacity and attitude towards continuous innovation. Apart from implementing concrete reforms, it is critical that the modernization process develops the organization's ability to design and carry out change.

The Itagüí Courts Modernization Process: A Success Story

PROJECT BACKGROUND

The Department of Antioquia, Colombia hosts an entrepreneurial class with a strong tradition of association with public interest activities. Private charity foundations, such as CITA, *Corona* and *Restrepo Barco*, have developed a series of programs in coordination with public entities. Improvements in education, housing, small businesses and health were typical goals for these initiatives. The directors of these entities have a clear view about their own mission:

We understand that the State is unable to solve all social problems. In turn, we play a key role, as members of this community, in coordination with Government agencies to generate a new social reality. We take advantage of our capabilities and try to make the dream of living in a better country a reality. We cannot-and we are well aware of it-let the country fall apart. Economic considerations are not a

²⁰Measurmt (Management Consulting). "Achieving profitable training", 1999.

*priority in these matters; what we consider important is to achieve a long desired social peace. We are not talking about state incentives or donations to private enterprises. We are talking about a fact of reality; which is neither frequent nor easy to happen in any place of the world: we are just talking about private initiatives with a positive concrete social impact.*²¹

One of these organizations, CITA, developed the idea of modernizing the Itagüí Courts. After a diagnostic study of community justice needs, CITA looked for the support and partnership of the Superior Court of Medellín, the district judges, the city hall and FES Foundation. Experts in organizational reengineering, computer systems and other disciplines were involved and started the project in 1989.²² CITA and FES presented the Itagüí judges with a proposal to modernize their courts and provided the financial resources to implement this initiative.

Following completion of the first phase in 1991, a second phase began when the Colombian Justice Ministry and the Supreme Court joined the project with the backing of the Presidency. Minimum changes were introduced at project inception favoring instead those essential to generate positive short-term impact.²³ Several factors were critical for the success of the project's first phase. The first was the strategic alliance between the public and private sectors in which the latter committed resources and "bet" on a public initiative rather than proposing specific goals. The second was the support of prominent individuals who were committed to sponsor the project from their own positions in the community. Lastly, although the legal framework was not ideal to facilitate reforms, the changes introduced by Law 30 of 1997 and Decrees 2278 and 2287 of 1989 allowed the project to advance along the lines defined by the project leadership.

²¹ Said, Javier. Interviews with directors of CITA and Corona, Medellín, 1998.

²² Most experts were independent volunteer professionals.

²³ Arbeláez, Carlos. "Evaluation of the components of the modernization and systematization project of the Itagüí Tribunals", Thesis Ochoa, Armenia, 1992.

PROJECT OBJECTIVES

The primary objective of the Itagüí project was to improve the delivery of justice service within the Itagüí municipality. In particular it sought to:

- Dignify the judge as a public servant and as a judicial authority;
- Generate a positive image for the court system and recover citizen trust;
- Improve court performance through the design and implementation of an effective case management system;
- Design a judicial support office in which all administrative tasks could be centralized;
- Refurbish court facilities to make them more operative and comfortable for users and workers alike;
- Train personnel on relevant judicial matters, modern management techniques and computer technology; and
- Improve file management and establish and update court libraries.

A COMMON THREAD FOR CHANGE ACTIVITIES

The guiding concept adopted by the leaders regarding the project was:

The modernization and systematization of the Itagüí Courts Project is a permanent process capable of perfection; a project that will be enhanced by the future development and achievements of management sciences.

Although not expressed in total quality management or managing innovative terms, this statement clearly proposes that change be a “permanent process open to future knowledge” reflecting the

fundamental features of those management tools. The application of different modernization techniques was subsequently detailed in the program and included, among others, teamwork, redesign of processes, systematization and automation, benchmarking, and customer service. The active participation of staff, and innovation in the first phase, became a regular feature of the entire process.

The organizational structure adopted for the change process is another important project element. The leaders agreed that the initiative should be made operational *in situ* through different committees comprised of judges and judicial staff selected to address specific issues. The process was described in a manual entitled, the *Basic Administrative Model* which named a Strategic Level Team responsible for the project's general policy-making patterns, defined a Technical Level Implementation Team, and featured high-level sponsors. The manual also defines various working teams responsible for the development of specific proposals and names a Corporate Group, comprised of all judges, and an employee committee, to act as a sounding board to monitor the decision-making process.

This change process was then "formalized" to ensure that the permanent work of each team would complement the overall initiative and lead to the design and dissemination of a document that contains the recommendations of the groups involved in specific components. Key tasks included the development of a basic management model, a human resources program, education and training, a standardization program, a monitoring and evaluation program, a user's service manual, a communications program, special events programming, roles definition, a procedural manual, and a filing model design. Staff participation and communication of results became a regular feature of this initiative.

A CLEAR DEFINITION OF THE NEXT STEPS

In the corridors of the Itaguí Courthouses, in the employee training manual and on meeting room walls, visitors see messages regarding the organization's mission, vision, values and credo. Below we present a few of these messages to encourage individual conclusions regarding the impact these messages might have on the attitudes of Itaguí Tribunal employees.

MISSION: THE CORNERSTONE OF OUR ORGANIZATION

“To administer justice effectively and efficiently, investigating and adjudicating cases affecting our society in order to achieve peace. To seek personal and organizational development, working diligently ethically and respectfully, in order to improve the services provided by the judicial branch.”

VISION: OUR DREAM FOR THE FUTURE

“To be the most effective tribunals in Colombia in order to contribute to social development and peace.”

CREDO

We believe in unity of action and effective collaboration; we demand adherence to personal and organizational goals. We accept social responsibilities and we are committed to our mission in society. We understand that our work must be oriented by efficiency and competence according to the standards adopted by the judicial branch, defending the principles of loyalty, honesty and liberty. Itagüí court officials will be identified by their vocation, impartiality, transparency and humanity.

These statements have not become “dead letter”. Itagüí court staff have internalized what the organization and society expects from them. The judicial employees can explain perfectly their mission, vision and credo, a fact not common in other public institutions in Latin America where in most cases even top management is not able to clarify or define the organizational mission.

PRIMARY FOCUS: THE USERS

One of the most important routine activities of the Itagüí pilot is a user satisfaction survey carried out every six months. Listening periodically to the “voice of the client” has become essential to the Itagüí courts. The surveys measure lawyers’ opinions on information services or document reception, the time spent in providing services, user needs, number of people served daily, peak service days, and principal user profiles.

These very simple surveys make it possible to record detailed statistics. For example, lawyers visit court offices more often than the parties or legal assistants. Wednesday is the day of greatest court facility use. Users have expressed satisfaction regarding aspects such as kind and fast service, and general comfort in the premises. More than 90% of the users rate the service provided in the Itagüí courts as “good” or “very good”. These results have contributed to a positive overall performance evaluation of the judicial change group that keeps re-focusing efforts on improvement projects and generating new ideas in order to provide better service.

One particularly interesting finding of the latest version of the survey is that many users do not understand the Colombian judicial system. This finding demonstrates an obstacle for judges and employees seeking to improve performance. As a consequence, the pilot project has created a community education program in which the judges design courses to provide basic training on legal and procedural issues. These courses are available for women, entrepreneurs, schools and other organizations.

For the Itagüí courts, the regular implementation of these surveys has become an antenna pointed at the community to capture information for self-evaluation exercises. This instrument has also become one of the principal engines of new ideas for modernization initiatives.

USE OF INDICATORS AND GOALS

The Judicial Support Office (JSO) measures and disseminates information regarding a series of indicators collected on a regular basis. The first group, discussed in the previous section, evaluates user demands and satisfaction; another group determines the time taken to provide users with various types of services. The JSO provides eight basic customer services and each service is defined and assigned a “service delivery deadline” that is not to be exceeded. For example, the receipt of a document should take from 15 to 45 seconds; the recording of a lawsuit between 120 and 150 seconds. Information about the docket should take between 10 and 40 seconds and information provided to users regarding the status of the process from 5 to 30 seconds. Lastly, the recording of new documents should take no more than one minute.

JSO staff have committed themselves to prescribed user time limits in the court house. All employees are aware of these goals and meet periodically to discuss the targets, implement them and try to meet all those adopted by their leadership. Additionally, a group of productivity indicators measure the number of incoming, pending and solved cases. Each judge is expected to meet a monthly quota of cases solved. As a result of court staff commitment to meet these goals, the Itagüí courts have succeeded in substantially reducing court congestion.

THE ROLE OF TRAINING

A survey carried out in different Colombian court districts demonstrated that Itagüí staff knowledge levels on key administrative and operational issues is comparatively higher than that of court staff in other districts. On average, using a scale of 1 for “low level of knowledge” and 5 for “high level of knowledge”, the other courts scored 2.5 or between “regular” and “low”. In contrast, the Itagüí court staff scored a 3.5. Even more significant, concepts such as teamwork, continuous improvement, performance indicators, court office management and reengineering have become part of the routine communications among Itagüí court staff.²⁴

When asked why these concepts were familiar, employees responses included, “it is something that has to do with our everyday life. These are tools that help us to do better those things that we are supposed to do”. Behind this response, it is easy to see the effectiveness of the training methodology “learning-by-doing” and results-oriented training. Moreover, training has not only been focused on improving results in the work place, but also on enhancing interpersonal and family relations.

A final feature of the court office management model is that it specifies that each judge must coordinate the JSO for a period of six months while relinquishing other responsibilities. As a result, judges are required to put new management techniques and practice to periodic use. These skills are not only useful while coordinating the JSO but also during the management of individual court offices.

²⁴ The survey shows how close are some courts from the traditional “bureaucratic culture” or the modern “continuous change” processes. The variables measured relate to administrative style, leadership, atmosphere, incentives system, human resources, quality services, etc.

STRONG AND EFFECTIVE LEADERSHIP

The Itagüí Pilot Project has moved through several stages. At each stage, judges and court staff have recognized that clarity, energy and skilled management of external influences are vital factors to propel the project forward. Throughout the pilot, project leadership has focused on a final goal, clarified confusing situations, persistently communicated important commitments, injected energy when low, and promoted dialogue when required.²⁵ The consensus reached by judges regarding the change agenda and the way to achieve it has transformed them into natural change process leaders. Combined with regular community interaction, a key reason for the project's success has been the role played by these natural leaders.

CHANGING HOW TO DO BUSINESS

Teamwork techniques have "revolutionized" the Itagüí courts. Staff priorities now include concepts such as improving a meeting, team facilitator roles, commitment to conclude a meeting, making a good presentation with the assistance of audiovisual materials and better public communications. This approach not only was included in project design activities, but also became standard daily practice. For the purposes of training and teamwork, judges and staff have had access to basic resources including a conference room, audiovisual materials and basic equipment. An interesting result has been that the judges, backed by employees of the JSO, have prepared the community education program courses and periodically use these facilities to support the outreach program.

Another significant pilot feature is the right of each employee to propose his/her own improvement initiatives and to have them considered and evaluated. If found beneficial for the organization, the initiatives may be approved and implemented. In the alternative, proponents receive an explanation of why the proposal was not acceptable at the time.²⁶ One successful staff initiative includes the central automated file administration system.

²⁵ Judges that have exercised a strong leadership in the project have been recently promoted to the highest bodies within the Judicial Branch.

²⁶ System used by public and private institutions consisting in the execution of a process of representation, evaluation, approval (rejection), execution, and evaluation of innovative proposals.

RESOURCE REQUIREMENTS

What resources were required to implement the Itagüí court pilot project? It is currently estimated that the project's first phase and initial design cost was approximately \$200,000 and that the second stage including implementation, furniture and computers cost was approximately another \$200,000. Most of these expenditures have been covered by project sponsors and not by the national budget.

To calculate adequately the real cost of the project, however, one should also add the contributions of external unpaid consultants, the time dedicated by judges, and other in-kind contributions. Calculating the daily rate of these professionals and adding the cost of additional judicial staff members and other professionals, the cost could reach \$1 million distributed over eight years. Nevertheless, this sum is very low when compared with the substantial investments made in other Latin American countries that have demonstrated little success. Of significant interest is survey evidence demonstrating that judges contributed approximately fifteen percent, or three days per month, of their total work time to, in their own words, "keep the modernization process alive". This fact demonstrates that one of the most important aspects of this modernization pilot was the dedication of time by leaders, judges and judicial staff alike to ensure a successful change process.

EFFECTS ON THE ORGANIZATIONAL CULTURE

Itagüí court employees reveal that they "sense" the pilot project has moved forward. Indicators and user surveys confirm this perception. Observers from other judicial districts have also noted that in Itagüí, "people do business in a different way." Local and national authorities, citizens and foreign organizations have publicly recognized the progress achieved in improving the Itagüí court operations. This recognition, combined with the fact that leaders communicate the results to the organization, has generated a positive feeling of "achievement and satisfaction" which are essential factors for the creation and sustainability of a change culture.

A survey conducted to compare the organizational cultures among Colombian courts demonstrates that a series of Itagüí practices and "rituals" combine to bring it closer to a "culture of innova-

tion” than a traditional “conservative organization.” A significant indicator of an innovation culture, in contrast to a conservative organization, is the use of organizational practices that foster continuous change. The survey quantified sixteen organizational elements using a scale from 1 to 5 in which 1 was closer to a traditional culture and 5 was closer to a culture of innovation. The Itagüí result was 4.4 while the other courts fluctuated between 3.2 and 3.7. In a survey on organizational culture, obtaining a score of 4.4 is quite an achievement even for private companies. The survey demonstrates that the pilot accounted not only for operational changes, but also instilling change in the “veins” of the institution. Additionally, an organizational climate survey in the same courts to measure the way in which “employees feel in the organization” gave Itagüí a 4.0 while the other courts received a 3.5 average. In comparative terms, Itagüí court employees feel more satisfied than other Colombian judicial staff.

ENTHUSIASTIC SPONSORS

The CITA played a protective and supportive project role. CITA provided a portion of the required financial resources and technical assistance regarding management tools. In addition, CITA expressed publicly, its unconditional support for the project vis-à-vis other authorities. CITA also encouraged judges to become involved in the project by treating them as critical social actors and not according to traditional negative perceptions. Lastly, CITA’s leadership has provided conceptual and intellectual support on technical problems and lobbying efforts with other authorities, and helped to disseminate project successes both nationally and internationally.

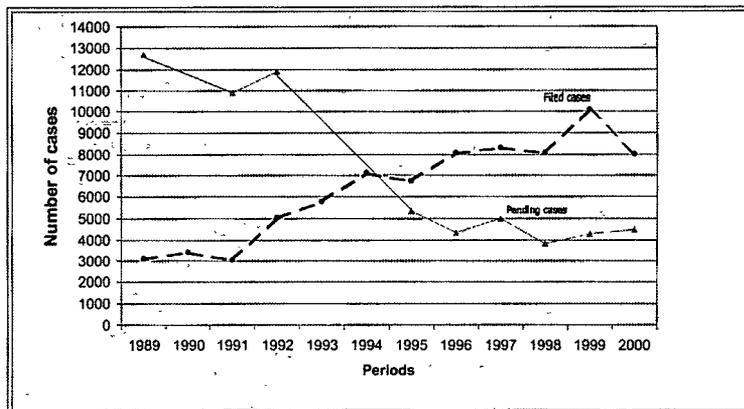
THE FIGURES

The Itagüí courts have shown positive results. Based on productivity indicators, as measured by the number of cases solved per year, judges’ performance has improved. In 1991, the clearance rate (disposed over filed cases) reached only 65%; resolved cases totaled 2,200 and filed cases 3,400. In 1998, the number of filed cases increased to almost 7,900. This figure represents an almost 135% increase in comparison with 1991. In the same year, tribunals resolved 5,900 cases and 75% of the number of cases initiated were

resolved within the same calendar year. As measured by total district demand satisfaction some congestion remains in the Itagüí courts. However, these courts are responding to users' requirements with a higher degree of effectiveness and productivity. In the future, increasing the court's performance will not only require internal improvements, but also changes in procedural legislation as well as lawyers practices and attitudes.

The performance of the Itagüí courts is also reflected in the consistent reduction of pending cases. During the final quarter of 1989, total pending cases exceeded 12,000. In contrast, during the same period in 2000, there were 5,000 fewer pending cases even though the number of filed cases rose by 3,200 to a total of more than 8,000 per year. The graph below describes the evolution of this indicator.

Chart: Filed cases versus pending cases (measured at the end of each calendar year)²⁷



²⁷ Data source provided by Lucía Arbeláez de Tobón, Vice President, Colombian Judicial Council

SUMMARY OF PROJECT ACHIEVEMENTS

Many of the Itagüí project's achievements, particularly in the area of court management, are quantifiable. Other achievements by their nature are more qualitative and verifiable only through surveys with employees, users and authorities.

COURT OFFICES MANAGEMENT

From an operational point of view, the most important Itagüí project achievement has been the design and implementation of a new court administration model. This model introduces various innovations with respect to the traditional model operating in Latin American countries.²⁸ The Itagüí model incorporates a JSO to centralize many administrative duties enabling judges and staff to concentrate on their judicial duties. The JSO assumed the reception and handling of files and documents, providing information to users about the file's status and court decision notifications. All of these processes are backed up by a computerized case tracking system.

A typical Itagüí court office is limited to one judge, one secretary, one official and one clerk. The JSO assumed the remaining administrative staff. A coordinating judge oversees the JSO for six months and is backstopped by an administrative coordinator responsible for information systems administration. Statistical evidence demonstrates that the establishment of this administrative model has improved the work allocation system, coordination among judges and administrative staff, and the timeliness and reliability of information provided to users. It has also reduced the time required for administrative processes and user follow-up, organized the notification system and streamlined other routine matters.

JUDICIAL IMAGE

Improvements in court operations have had a direct impact on the institutional image. The project has not only encouraged regular interaction between judges and civil society, but also contributed to a more favorable public perception. A new proactive approach fa-

²⁸ Different models have been recently implemented in Latin America (Barquisimeto, Bogotá, Chiclayo, Lima, San José, and Santiago among others)

cilitated a working relationship with other local authorities and businessmen to exchange views regarding specific areas of future cooperation. As a result, judges have dignified their societal status, and provided a more positive image of their functions and responsibilities. Modern facilities and an adequate distribution of working space, both in the courts and in the JSO have further reinforced the new institutional change.

TRAINED STAFF

The Itagüí court staff has been trained in modern techniques applicable to court office operations, case file management and other skills. In addition to specialized orientation courses for new personnel, training has become a regular function within the organization.²⁹

A FUNCTIONING MODEL

Providing higher quality administration of justice services in Itagüí is the strongest evidence of the new court administration model's success. The mixture of revised procedures, modern technologies and motivated human resources, though far from perfect, is nevertheless inspiring other courts in Colombia and becoming a model worth considering in other Latin American countries.

THE JUDGES NEW ROLE

In the Itagüí courts, judges do more than simply study cases and issue judgments. In addition to this traditional role, they have become social actors and critical members of the local community. Judges relate to their community, understand the community's perception of them, and how best to improve communication and their vision. The Itagüí judges have also taken the initiative to launch a program to educate communities and representatives of businesses and schools on administration of justice issues.

²⁹ Survey done by the author as part of this case study, where a sample of 90% of the staff was taken. Participants were asked to evaluate the knowledge level of management matters like: strategic plan, continuous improvement, user's satisfaction, process reengineering, team work, file system, case tracking system, among others.

Conclusion

THIS paper has highlighted a few of the features that exemplify the Itagüí court's successful change process. The focus is on the process because the results simply reflect the ability of Itagüí judicial authorities to apply correctly certain management tools. The process also suggests that behavioral and leadership issues have been critical to overall project success. Contrary to the common assumption in legal and judicial reform projects, this project demonstrates that major changes to a legal framework may not be required prior to undertaking an ambitious initiative provided that the system's main actors are willing to take advantage of their full potential under that framework.

The Itagüí courts today benefit from an acceptable level of automation to handle their workflow including redesigned processes, an operation manual, orientation programs, user satisfaction measures, and the integration of other appropriate tools to provide high quality local community services. Nonetheless, project participants have realized that the real change occurred not from the computers, manuals or processes but rather from their own ability to improve service delivery on a regular basis.

Why is the Itagüí experience important? The principal accomplishment of the Itagüí initiative is that it reinforces several important legal and judicial reform lessons. The project provides a methodology to be considered in the future that demonstrates the importance of institutional commitment, a comprehensive approach and partnerships with key private and public sector institutions. In addition, the project reinforces other legal and judicial reform experiences showing that such reform is a long-term process and should respond to internal needs. Perhaps most importantly, the project demonstrates the utility of scaling up successful models by leveraging critical institutional support and participatory processes to spur country-wide reform, as well as share knowledge within the Latin America and Caribbean region.

“To articulate change is critical. Without this component, the transformation process could run out of control. For the majority of the organizations, the biggest challenge is how to lead the change process: only leadership could sweep

the forces of corporate inertia. Only leadership could motivate the required actions to alter the status at a significant level. Only leadership could root the changes in the organizational culture. Leadership defines the future of the organization, aligns the employees around the vision and inspires them to do things so as to make the things happen, in spite of the obstacles.”³⁰

In spite of the absence of budgetary support, the pilot advanced for two years surrounded by the sounds and dust of a nearby construction site. Although the responsibilities of the JSO has not been specifically provided by law, and some bureaucratic difficulties remained, key changes took place and others began to take shape.

The management tools and techniques used to achieve a functioning model deserve some credit, but the most important element was a committed judicial staff united around a common vision, proud of the institution and the achievements reached, and aware of their new societal role. The change process was able to install an “internal change engine” that today still promotes innovation under the leadership of judges. The Itagüí courts remain in a better position than other Colombian courts to confront new organizational challenges.

The Itagüí management model has yet to be applied fully in other courts either in the region of Antioquia or throughout Colombia, although it could be replicated easily. However, close coordination with the Colombian Judicial Council has produced a model that incorporates the lessons learned from the Itagüí courts that can be used to scale up this pilot experience. The results achieved during the last eight years have generated a broader consensus on further replications, and a World Bank financed project will support a larger scale cultural change process in Colombian courts. The Judicial Council model has incorporated certain elements linked to centralized secretarial offices from the Itagüí model, but the key element of judicial oversight in daily administration, development and promotion of the modernization initiative will not be incorporated. Change management was one element differentiating the Itagüí pi-

³⁰ Kotter, John. “*Leading Change: Why Transformation Efforts Fail*”, Harvard Business Review, March-April, 1995.

lot from traditional “top-down” judicial reforms; in the future reformers and decision-makers should ascertain to what extent this element is critical to shorten the long and painful path of Latin American judicial modernization. Furthermore, they should study lessons learned and apply the know-how acquired in the Itagüí experience since it remains a valuable precedent for Colombia and countries throughout the region.

Profile of a Modern Colombian Judge

BASED on the Itagüí experience, and the desire to take into account lessons from this success story, in May 1999 the World Bank organized a workshop with the Itagüí judges. The objective was to develop and validate a common vision about the ideal profile of a modern Colombian judge.

Methodology

IN a preliminary brainstorming session the judges identified the concepts of independence and leadership as critical elements for the consolidation of a democratic society and the development of any reform strategy to fight congestion and delays. In subsequent sessions, judges were asked to identify a few attributes and talents that were essential for the ideal judge profile as well as the major constraints and obstacles they had found to achieve such profile, and the short and medium-term measures that could remove the obstacles; individual, group and plenary work helped to elicit the conclusions and recommendations summarized in the following sections.

Profile Elements

Independence

The classic constitutional principle on separation of powers provides the Colombian Judiciary with protection against the pressures of political interests or the intervention of the other Branches. Nevertheless, according to the Itagüí judges, in addition to this safeguard the individual judge should be provided with the appropriate resources to adjudicate conflicts and enforce the law according to the strictest standards of fairness and timeliness. Independence would then have two complementary aspects:

1. As the supreme authority within the judicial process, judges should always be in a position to ensure the precedence of the public interest above the interests of the parties in conflict and their legal counsels, in accordance with due process principles; and
2. As judicial officials, judges should be protected against the interference of other members of the judiciary, officials of the Executive Branch or any outside interest.

Having been asked about the typical features of an independent judge, the Itagüí group identified the following:

Autonomy: The judge's ability to make decisions free from pressures exercised by litigants, support staff, other judicial or state authorities, or political or economic interests, and relieved from any fear of persecution or retaliation. If any pressure materializes, the judge should be in a position to react effectively and neutralize any attempt to bias his or her decisions through the exercise of all the powers vested upon him/her by law and with the unconditional support of other state authorities.³¹

³¹ Article 37, paragraphs 2 and 3 of the Colombian Code of Civil Procedure (CCP). Specifically on the judges' disciplinary powers, see Escobar, E *Los Poderes Disciplinarios del Juez*, Temis, Bogotá, 1985.

Stability: Judges are entitled to minimal assurances about career development (subject to periodic evaluation and satisfactory performance), remuneration consistent with their responsibilities and special recognition for outstanding achievements. Their decisions in particular cases should not impair the prospect of a fair assessment of their competencies or jeopardize a proven track record of services to the judiciary.

Impartiality: Judges should remain detached from personal or intellectual preferences that may bias their decisions during a judicial process. Impartiality also means the ability to deal thoroughly with issues and individuals, without social or personal prejudices. A judge's mission has always been to settle disputes in accordance with the law after a fair assessment of the individuals and the circumstances involved.

Mission: Judges are not common state officials or members of a bureaucratic apparatus that performs routine functions. They have a higher mission: adjudicating conflicts among members of society on behalf of the State. In their private and public demeanor, judges should embody the strictest ethical principles, as depositories of the authority vested in them by the Constitution and the laws. They should also demonstrate commitment to the institutional priorities and guidelines set forth by the authorities of the Judicial Branch.

Learning: A modern society is subject to sudden and fast-paced change. The legal system reflects the volatility of social and economic conditions in various ways: sometimes through formal amendments of statutory rules by the Legislative Branch, other times through judge-made interpretations of statutory rules. Judges should be ready to cope with these changes through a regular training program that includes not only legal subjects but also topics of other sciences that may assist them in the exercise of a function that requires interdisciplinary tools and approaches.

Flexibility: As a consequence of continuing education, the judge is expected to develop intellectual openness through regular

interaction with a variety of opinions. A democratic society welcomes the discussion of various solutions for old problems; intellectual dogmatism is completely unacceptable in a judge since it closes the door to innovation and progress, a key piece of the conflict-solving mechanisms of a political community.

Teamwork: The complexity of the modern world makes it impossible for the judge to accomplish the difficult task of administering justice without the active cooperation of other judges and support staff. Credit given for the outstanding performance of a judicial office (or the criticism for poor performance) should belong to the team that contributes to the delivery of a justice service with different inputs, all important for the prompt resolution of conflicts.

Leadership

For the Itagüí judges, leadership is a necessary complement of independence; one cannot exist without the other. It is the external-dynamic dimension of the judge's role, the one that determines an effective interaction with other actors in the judicial arena (parties, litigants, colleagues) as opposed to the mostly internal/latent characteristics of independence. It relates closely with the day-to-day business of a judicial office and the close links between the judiciary and the community.

Also critical, in connection with a society in transformation, is the leading role of the judges in the development of a new legal framework, more responsive to the needs of the citizenry and more consistent with the principles and expectations of a democratic polity. The Itagüí group believes that modern judges are not only the authorized interpreters of legal rules but also should be empowered to ascertain the best solution for a given case in light of the information provided by other sciences.

Therefore, a judge may create new legal rules on the basis of the sound interpretation of the existing rules and their interaction with social facts, a process that makes him or her not only the submissive executor of public policies, but also an active agent in the generation of new policies within the constraints imposed by the traditional Civil Law dependence on statutory law.

In the workshop, the Itagüí judges identified the key features of an ideal leadership role for a modern judge; consensus emerged about the following:

Proactivity: In spite of some bias towards the “dispositive”³² principle, the Colombian Code of Civil Procedure empowers the judge as the highest authority in the direction of the judicial process. Judges do not have to wait for the parties’ request to take critical decisions: require or dismiss evidence, reject unsubstantiated petitions, sanction any unrespectful or abusive behavior by the litigants. Moreover, the Code bars the judge from claiming lack of applicable law or insufficient clarity in a given legal text in order to delay decisions or deny justice.³³ To fulfill these legal mandates, a proactive judge must adopt a positive attitude towards unstructured situations and willingness to innovate in the middle of uncertain legal rules.

Credibility: Colombian judges should have the ability to inspire respect and confidence among users and colleagues. Decades of neglect have diminished the standing of the Judicial Branch in the public’s perception of state authorities. Apart from the institutional image strategies that the judiciary may develop, individual judges should take the lead in dispelling misconceptions about their role and proving their ability to accomplish the delicate task of conflict-solving through regular interaction with service users and a prominent position in the academia, the legal profession and local communities.

Effectiveness: Colombian judicial offices have limited technical and human resources that must be effectively utilized to achieve concrete results. Results-oriented management of scarce resources requires specific managerial skills; judges not only direct particular trials but also allocate (or redeploy) personnel and equipment to meet the deadlines established by law and the performance standards set forth by the judiciary.

³² In the modern theory of procedural law in Latin America, a “dispositive” system is one that privileges the role of the parties above that of the judge.

³³ Article 37, paragraph 8 of the CCP.

Sensitivity: Colombia's severe social and economic crisis underlies most of the cases that come under the jurisdiction of judges. Violence and unemployment were common sources of conflict in the late nineties and, not surprisingly, shaped the type of cases the judiciary was expected to solve. Judges should be aware of the roots, symptoms and effects of the crisis in order to better understand the conflicts and find creative ways to solve them within the rules prescribed by law.

Constraints and Obstacles

THE Itagüí group recognized that this profile is an ideal and, in spite of their best efforts, it is not always possible for the judges to acquire or maintain the talents and resources required to make it a reality. Accordingly, the group was asked to identify the factors that prevented the achievement of the ideal profile. Most judges agreed on the following:

Social Unrest

Threats to the life and personal security of judges and their families are a common occurrence in Colombia, in particular in the criminal jurisdiction. To administer justice in a country with pervasive violence may become a daunting task, especially in isolated areas where the State presence has been traditionally minimal or non-existent. The courage and sense of mission of thousands of judges who keep working in spite of this high-risk environment deserves increased recognition.

Poor Human Resources Management

Judges complain that most decisions concerning support staff recruitment, evaluation, promotion and removal are made by the Judicial Council's central office in Bogotá; judges are not consulted and the internal processes may take months or years to reach a conclusion.

Colombia's particular circumstances of social unrest, coupled with a serious economic and financial crisis, have increased the workload of a typical judicial office. Judges lack appropriate resources (human and technological) to handle an ever-increasing number of cases; congestion and delays are unavoidable.

In spite of these constraints, the best judges make every effort to keep up with the trends in service demand. Nevertheless, incentives are non-existent; poor performers receive the same remuneration and recognition than overachievers. Past efforts to award bonuses to the team of a judicial office that was able to meet certain standards of timeliness were abandoned given budget constraints.

Budget Dependence

The Colombian Judiciary does not generate revenues other than the small charges provided in the Judicial Tariff for certain secretarial transactions (copies, notifications).³⁴ All resources come from the National Budget and are subject to fiscal constraints. Judges do not participate in the preparation of budget proposals for discussion with the Executive or Legislative branches and lack the authority to handle essential expenses required to operate a small office.

Resistance to Change

In spite of the lip service given to reform ideals, some powerful interests (at all levels of the judiciary) are not supportive of the reform process. Change always instills fear; the way to do business may vary to such an extent that old skills are no longer needed and new skills should be acquired in order to deliver justice services. Lines of authority can also be modified and decision-making power transferred to new organs.

Insufficient Communication and Consultation

Judges believe that the higher levels of the judiciary are not always aware of the needs of the lower courts. Although consistent with the general trend in Latin America, the separation of administrative and jurisdictional responsibilities has generated some sense of alien-

³⁴ *Acuerdo No. 169*, Judicial Council. Articles 1 through 3

ation between administrators (who do not always have courtroom experience) and judges. In recent years, consultation in the design and implementation of reform strategies has been limited to certain judges.³⁵

Limited Managerial Skills

Judges recognize that they were trained to be lawyers, not managers. Their legal background is not always conducive to a proactive role in the direction of the process or in the handling of the scarce resources of the judicial office. They require specialized training for the development of missing managerial skills, in addition to the traditional programs offered by the Judicial School for continuing legal education.

Poor Institutional Image

The media projects a very negative image of the judges and the administration of justice generally; absurd misconceptions have become conventional wisdom. This is partly due to Colombia's social unrest of recent years but also a result of media preference for scandals that make catchy headlines; honest judges are "convicted" by poorly informed journalists. The highest judicial authorities should undertake an institutional campaign to restore the image of respectability and integrity necessary for the judiciary.³⁶

Lack of Coordination with Other State Authorities

The judiciary requires the support of specialized agencies of the Executive Branch in order to provide quality services to the community. For instance, in family matters the *Instituto de Bienestar*

³⁵ Some Nation-wide innovations like specialized secretariats to handle most routine administrative matters have not taken into account the Itaguí experience with a common services unit that provides the judges with a leading role to initiate a cultural change in court and case management.

³⁶ About the differences between the judges, the lawyers and the citizen's perception of the system, see *Tiempos procesales y opinión en el servicio de justicia*, Consejo Superior de la Judicatura-Universidad Nacional de Colombia, Bogotá, 1997.

Familiar (IBF) has a critical role; similarly, in criminal trials, public defenders help to make effective the Constitutional due process guarantee. Coordination with these and other agencies should be improved so as to provide the citizens with an integrated justice service; the community is not concerned with the internal structure or lines of authority of each agency, it only demands prompt attention to individual needs.

Limited Resources

Judges complain that judicial offices lack adequate infrastructure, up-to-date computer technology and even office supplies; modernization and maintenance efforts are sporadic and insufficient. Nevertheless, they agree that these are only a means towards the solution to the major shortcomings of the system; the infrastructure and the equipment are as good as the staff that uses them. Consequently, training should aim to develop the proper skills to take full advantage of these tools.

Insufficient Dissemination of Legal Information

Lastly, the Itagüí group noted that they are not receiving all the information required to properly exercise their functions. In the last twenty years, all Codes other than the Civil Code have been replaced (some of them several times); Congress continues the practice of patchy amendments to important pieces of legislation. The highest tribunals constantly change their precedents on the interpretation of critical provisions in the law. Judges must catch up with the never-ending process of legislative change and should have access to the most reliable sources of information.

Role of Legal Reforms

THE achievement of the ideal profile is not a matter of legal rules. Even though some legislative reforms may be desirable, the Itagüí judges believe that most of the changes required to advance towards the ideal profile do not involve amendments to the existing legal framework but are feasible under the current rules.

Some are simple attitudinal changes within the judges themselves: willingness to open the doors to change, to become leaders of a process, to defeat the traditional cynicism and pessimism of Colombian judicial staff. Others require decisions by the judiciary and the active support of other Branches: modifications of the administrative processes under the authority of the Judicial Council, substantial investments in training and technological improvements, overhaul of the judicial career system.

Moreover, the Itagüí group regarded the frequent modification of legal rules as highly counterproductive. The instability of a legal framework generates confusion and uncertainty among judicial officials and service users. More seriously, public opinion of the legal system as a whole diminishes when changes are frequent and arbitrary: a widespread perception arises that there are no fixed or clear rules to protect the citizens but that everything can change suddenly under the pressure of expediency or passing circumstances.

An Agenda for Legal and Judicial Reform in Colombia

THE experience of the Itaguí judges shows that cultural change within judicial institutions is possible; a nation-wide strategy should include actions to strengthen the judge's proactive role to direct the judicial process, so as to address most of the major obstacles and constraints identified for the achievement of the ideal profile of a modern Colombian judge.

Streamlined Organizational Processes

PRESENTLY, most judicial staff perform administrative and judicial functions on an *ad-hoc* basis in a manner that not only is inefficient but also questionable from the point of view of Colombia's laws. The Judicial Council has undertaken a review of the allocation of these functions in order to identify strengths and weaknesses, develop a more specialized profile for each judicial position, and reallocate responsibilities accordingly.

Further studies on the restructuring of the administrative side of the Colombian judicial process may determine: (i) the real need for a particular step within the entire process; (ii) the best options available to implement the steps identified as essential; and (iii) the legal

instruments required to make any change possible (either amendments to the Code of Civil Procedure and supplemental legislation or internal decisions of the Council or other authorities).

The Judicial Council may require assistance in the design and implementation of specific actions to separate administrative and judicial functions in order to ensure the efficient allocation of resources and improve public service standards. Areas identified for further analysis are the following:

Specialized Support Service Offices

For several years Judicial Service Offices have been operational not only in Itagüí, but also in other major Colombian cities in the civil, family and labor jurisdictions as a first attempt to combine typical common service functions (statistics, docket, archive³⁷, deposits).

These offices will be transformed and enhanced as Judicial Support Offices under the provisions of the Council's *Acuerdo* No. 208 of 1997. The new offices will be located closer to the courtrooms and will provide basic services under a model of "real-time" response to the immediate user needs. Specifically, the offices will handle: (a) personal presentation of case-related documents; (b) automatic or manual distribution of new cases; (c) personal service of process; (d) information services to users or state authorities; (e) final archival of closed cases; (f) administration of judicial deposits; and support services to any court within its jurisdiction, including the lists of authorized expert witnesses.

Specialized Judges or Judicial Offices

On the basis of the authority conferred by a recent law³⁸, the Council may consider the adoption of several bold reorganization measures, including: (a) to establish of a new type of judge specialized in debt collection (*juez de ejecución*) in particular for the country's major cities (Bogotá, Medellín, Cali and Barranquilla). This judge

³⁷ There are three levels in the archival function: current (cases under trial), intermediate (cases recently decided) and historical (closed files). Delays are particularly serious at the current and intermediate levels and affect various stages of the judicial process.

³⁸ Article 63 of Law 270 of 1996.

would be solely responsible for the administrative portion of the debt collection procedure (seizure, attachment, appraisal and auction) that has a major impact on the effectiveness of creditors rights and requires qualified legal staff to ensure the due process of law; or (b) to develop specialized offices within the judiciary for the handling of the same administrative tasks (*Oficinas de Ejecución*)³⁹.

Reorganized Internal Processes

Under current law, the Judicial Council is empowered to take any decision related to the basic internal organization of judicial offices⁴⁰. In furtherance of this mandate, the Council is developing a modernization program to specialize and make more efficient certain functions within each courtroom (*Programa de racionalización del funcionamiento del despacho judicial como unidad modular*).

This program will group particular tasks around four modules (secretarial, service to the public, administrative, decision-making). These modules will operate as a service delivery process in which each task will be assigned to a particular official or team, responsible for a “value-add” to the final product: a conflict resolution decision. Judicial authorities will be empowered to take corrective measures along the way to improve performance.

Similarly, the current legal framework allows important changes to take place in the way a typical courtroom conducts business:

- As a corollary of the principles of concentration, immediacy and orality, judges can arrange for major decisions to be taken during the same hearing⁴¹. Prior to the hearing, they should analyze the claims and counter-claims, and the evidence provided or petitioned. During the hearing, judges may attempt conciliation, clarify any legal or

³⁹ For the debt collection process see Urcochea, M. *El Proceso Ejecutivo*, Ministerio de Justicia y el Derecho, Bogotá, 1997, pg. 218 through 220. The author suggests the transfer of the responsibility of the auction procedure to specialized companies, under the supervision of the Judicial Council.

⁴⁰ Art. 51 of Law 270 of 1996.

⁴¹ Article 101 of the CCP.

factual matter, accept or reject any request from the parties, and solve any pending issue that may jeopardize the success of the entire process (*nulidad*).

- In a manner consistent with the principles of effectiveness and proactivity in the judicial process, judges can declare the anticipated termination of a process (*perención*) as a result of the parties' inaction for six months or more, upon the request of one party or by the judge's own initiative⁴².

These decisions are essential to start any effective workload alleviation program; the raw statistics of a courtroom may be distorted by the existence of a number of cases that have come to a stand-still sometimes because the matter has been settled out-of-court, other times because it is in the interest of the parties (or their lawyers) to delay the process.

Dejudicialization of Certain Matters

In addition to the transfer of typical administrative actions to specialized units, it is proposed to continue the trend of "dejudicialization" that in the past has shifted the handling of probate and marriage (including patrimonial aspects) to notary offices. Any further move on this side would most likely require legislative action.

Improved Interdisciplinary Support

The Judicial Council is reviewing the operation of the system of court-attached professionals (*auxiliares de la justicia*), including expert witnesses (*peritos*) and receivers (*secuestres*). Poor quality services, serious delays in fulfilling their mandate and major abuses of the powers delegated by the court are among the issues commonly raised by litigants and other service users.

⁴² Article 346 of the CCP and Art. 19 of Law 446 of 1998.

A major overhaul in this field is urgently needed and could be effected by means of Regulation (*Decreto Reglamentario*)⁴³ and the Council's direct action for:

- Improved mechanisms for the preparation of the professionals' lists (open selection on the basis of proven experience and qualifications; preference to corporate bodies subject to Government supervision).
- Effective supervision of performance (periodic reporting by the professional; regular up-dates of his or her curriculum; on line access to background checks by any Judicial Support Office).
- Provision of specialized training through the Judicial School (*Escuela Judicial Rodrigo Lara Bonilla*) or by agreement with universities or recognized professional associations (in the areas relevant for the professional's work and related legal matters).
- Effective accountability and transparency (standard criteria for remuneration; final reports; random audits of records and accounts; enforcement of the disciplinary measures regarding court-attached experts, by the court and by professional bodies; exclusion from the list).

In particular, in the context of the debt collection process, the Council might issue a policy that instructs judges to delegate the handling of the administrative functions of debt collection to specialized government or private sector agencies as receivers (for instance, financial institutions with experience in the administration of certain type of assets like real estate or movable items of significant value (*Sociedades Fiduciarias* or *Almacenes Generales de Depósito*)).

⁴³ Currently certain matters related to court-attached professionals are dealt with in a Regulation (Decree No. 2265 of 1969) and others in the law. The general principles of allocation of rule-making authority established in Article 257 of the Constitution provide that the Council may issue guidelines concerning the efficient administration of justice, the internal organization and functions of judicial offices, and administrative and judicial procedures in matters not otherwise governed by law.

Enhanced Access to Information.

Legal and Judicial Information

The Colombian Judiciary has available various instruments to provide up-to-date information to judges and judicial staff. The Judicial School has developed training programs that provide regular updates on legal education to judicial personnel. The Council's Gazette facilitates access to key legislation and the decisions of the High Courts; the Council's WebPage and intranet have been operational for several years.

Nevertheless, major areas remain open for improvement. Most of the information available is of interest to the judge as a lawyer, but specific information dealing with the judicial function is still missing; the Council might fill this vacuum with non-binding guidelines or directives on matters specifically relevant for the judges day-to-day work, as best practices in the management of courtroom resources or formats suggested to simplify certain routine tasks.

Effective Case-Tracking Systems

The Colombian Judicial Council has contracted the acquisition and installation of a state-of-the-art case-tracking system. In order to assist in the smooth phasing-in of the system, in coordination with software providers, the Judicial School is preparing a new training methodology that includes *in situ* assistance to the staff responsible for administering the system and *intra aula* refresher courses.

The Council intends to link training and "production" through practical workshops that will include testing the new systems with specific court files, so as to show judicial staff "on the ground" the benefits associated with their implementation. This methodology is expected to reduce the natural resistance to change and the fear of closer follow-up by the judiciary of the performance of each office; it is designed to make the judicial staff the main supporter of the process through sensitization and development of a commitment to change on the basis of a "rapid results" program that in a few months may gradually extend the system to the whole case inventory, starting with the most recent cases.

This is a process that may radically change the way the 3,200 judicial offices do business in the country (currently nearly 98% of the courts only have manual systems) and will help them to cope with an increased workload calculated in average around 100 files more per office per day. In order to minimize any disruption to the judicial services (that would further aggravate the delays) the Council has considered the possibility of involving law students, as authorized by Law 446 of 1998.

Improved Human Resource Management

IN Colombia, the judicial career was effectively established in 1996⁴⁴ and applies to all judges and judicial employees (including the Council's administrative staff and all managerial positions other than the Councilors themselves). By early 2000, almost 100% of the judges⁴⁵ and around 70% of the support staff had been incorporated into the career system⁴⁶. Mechanisms for transparent competition and periodic evaluations are in place; critical decisions in both processes remain centralized although some functions have been delegated to the Council's twenty-three regional offices.

National profiles for eligible candidates and national performance standards have been developed. The profiles are based on the same principles of independence and leadership identified by the Itagüí judges (breaking new grounds in legal thought, facing current national issues, etc). The comparison of the candidate with the profile is effected through a variety of techniques: legal knowledge exams and psycho-technical tests⁴⁷.

⁴⁴ Articles 156 through 195 of Law 294 of 1996.

⁴⁵ A few positions in areas affected by civil unrest are pending (less than 1.5% of the total). The latest competition for judges of all levels attracted 12,000 candidates.

⁴⁶ The latest selection round covered 4,000 positions, 54,000 candidates submitted written applications and 14,000 were interviewed.

⁴⁷ In the judges' case, the Council sends a list of eligible candidates to the nominating authority (Supreme Court or Superior Court), nevertheless, a ruling by the Constitutional Tribunal has limited the role of that authority to the appointment of the candidate that received the highest score during the selection process. This ruling represents a major restriction to the nomination function of the judicial authorities and has been opposed by the Council.

The first evaluation of all Colombian judges took place in 1996; performance standards were based on service delivery to the users and categorized around four criteria:

- Quality (40%): assessment of final decisions (judgment or conciliation) not intermediate products.
- Effectiveness (40%): timeliness and productivity also measured against final decisions, on the basis of statistical techniques that have eliminated extreme cases and determined a manageable average workload per jurisdiction and category.
- Management (15%): organization and utilization of court resources.
- Publications (5%): only on legal matters⁴⁸.

In spite of the impressive achievements (to a certain extent, a unique case in Latin America) there is still room for improvement, and the Council authorities are examining the following areas:

Matching of Profiles and Performance Standards

The selection and evaluation processes have operated in isolation. Because of the lack of resources, the Council has been unable to match the results of the two processes, i.e. to verify the outcome of the selection through comparison of the candidate's profile with the judge's effective performance.

Database Development

Most of the judicial career processes are still handled manually by a small team in the Council's central offices; some software was de-

⁴⁸ Staff that does not meet the minimal performance standards established by the Council is subject to immediate dismissal.

veloped but never became operational, also because of budget constraints. The development and implementation of the following databases, to be integrated at the national and regional level, has become a priority:

- For candidates: at least 100,000 resumes have been received by the Council in the context of competitions for openings during the last five years. The interested applicant might update the information periodically and request an eligibility reclassification.
- For staff: the Colombian Judiciary urgently requires modern resources to handle the 20,000 curriculums of judicial staff, service sheets (including evaluations, promotions and transfers) and labor related issues (remuneration, entitlements).

Performance Incentives

Although judicial personnel have received substantial salary increases during the last decade, their remuneration is not competitive with other government agencies or the private sector. A bonus system was established in 1992 but discontinued two years later because of budget constraints⁴⁹. The Council may develop remuneration systems that match the results of performance evaluations, i.e. compensation packages that have a fixed portion (per judge category or jurisdiction) and a variable one (determined by the results of the periodic evaluations). Under current law, the Council may establish “incentives” for any judicial official who distinguishes himself or herself in the timeliness and quality of decisions⁵⁰.

⁴⁹ Article 44, Decree 2651 of 1991.

⁵⁰ Article 155 of Law 270 of 1996.



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