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Corruption in Bolivia: Reforming the Judiciary System

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A democratic state cannot long survive without a legitimate rule of law, enforced and protected by an independent and credible judiciary. In the United States, the judiciary also serves the function of creating a balance of powers between the legislative and the executive. However, too often in Latin America one of the branches is excessively strong, resulting in an unbalanced state where, usually the executive, imposes its will. The unfortunate result is inefficient accountability and the discretionary use of public goods, both of which foster corruption.

Citizens in developing nations witness outrageous acts of corruption with no one being held accountable, resulting in a loss of faith in democratic institutions. In Bolivia, the judiciary is endemically corrupted, condemning most of the commercial, civil and public activities to be corrupted too. When those with the legal obligation to guard the legality and rightfulness of civic and official activities are corrupted, economic recovery will take a long time because of the effect corruption has on increasing transaction costs.

The need for reform is clear. Investors will not consider a country where there is no guaranteed standard for judicial procedure or reliable process. To attract investors, a country must at least offer some degree of fairness and judicial certainty within a reasonable timeframe. Supreme Court Justice, Eduardo Rodriguez found that the average resolution of a commercial dispute considered an executive process under Bolivian law takes more than 6 years, while civil cases take between 12 to 15 years to be resolved. When the resolution of conflicts takes so many years, business ventures become less profitable and risky in that particular country

Foreign, as well as, domestic investors are reluctant to do business in Bolivia due to the excessive time and unpredictable outcome of judicial proceedings. A study by Mitchell Seligson of the University of Pittsburgh found that the perceived levels of corruption in the judiciary have doubled since 1998¹. In fact, according to the Corruption Perception Index of Transparency International, Bolivia has actually become more corrupt since 1996. In that year Bolivia ranked 36, in 1998 it was number 69, and in 2001 it was number 85.² Not surprisingly there has been a period of economic stagnation for the past four years.

¹ Seligson, M. La cultura política de la democracia en Bolivia. 2000 (p. 107)

² FTP: <http://www.gwdg.de/~uwwv/>

Corruption depresses economic growth by directly increasing transaction costs, defined by the dictionary of modern economics as [t]hose costs other than price which are incurred in trading of goods and services.³ These include expenses not related to factor inputs, but rather the costs of using the mechanisms of production and exchange. In this sense, transaction costs can be viewed as a friction in the economic system, some of which are a necessary result of the market process and cannot be entirely eliminated. Transaction costs can be reduced with mechanisms such as enforceable contracts, which require courts, police and alternative dispute resolution procedures.

Francis Fukuyama has also written that societies with higher levels of trust among constituencies can facilitate the reduction of transaction costs.⁴ When the costs of transacting are high, the result is significant friction within the economy, limiting development and slowing the growth of private businesses. Hernando De Soto believes that transaction costs are higher in developing economies because property rights are not properly protected by the state.⁵ Where legal rules and mechanisms of enforcement are lacking, property rights are not secure and determining the ownership and means of transfer of goods and services becomes nearly impossible. To be efficient, property rights must be universal and exclusive.

A corrupted judiciary makes it impossible to combat corruption in other government agencies. But, the executive and legislative branches have systematically de-powered the judiciary; especially since the former dictator Hugo Banzer Suarez restructured the legal system. It is this reality that has caused the government of Bolivia to seek to address the problem of corruption in the judiciary. However, internal and external pressures for quick reform are meeting with resistance and have not achieved the desired effects. Alternative solutions are needed to reduce corruption in the judiciary that have not been considered by legislators and reformers. Legitimate and effective reforms often meet resistance from the Bolivian congress itself, which has for many years been protecting of their own interest as a political class, modifying and altering the laws at their own interest and benefits.

The consequence is that laws are promulgated with defects, creating and consolidating an unpredictable legal system. The political elite can be expected to continue accommodating the law to its own benefit without intense pressure from reformers in the business community.

Recommendations for Reform

1. Election of Justices:

The legislative and the executive branches have the constitutional right to elect members of the judiciary, allowing them to politicize judicial selections. The Constitution and the Law of the Judicature need to give more independence to and remove the political influence from the election of members of the judiciary. A meritocracy should be used to elect and members of the judiciary, promoting judicial careers.

2. Reform the Criminal Code.

³ The MIT Dictionary of Modern Economics, p. 432.

⁴ Fukuyama, F. Trust, The Social Virtues and the Creation of Prosperity, p. 27, 151, 153.

⁵ De Soto, H. *El Misterio del Capital*.

It is important to reform the Criminal Code (Codigo Penal) to punish corruption inside the judiciary. In cases where a member of the judiciary is accused of corruption the burden of proof should shift so that they must prove their innocence. This is an approach that has been advocated by organizations such as Transparency International but only in cases where corruption is endemic, as the case in Bolivia. The penalties for corruption should also be harsh enough to influence the behavior of the judiciary.

3. Increase salaries.

It is important to increase the levels of salaries in the judicial branch as a way to dignify the judicial profession and reduce corruption.

4. Declaration of Assets.

It is worthwhile to enforce the declaration of assets to members of the judicial branch and relatives and family. It is too easy to cheat when disclosure applies only to the members of the judiciary and not to relatives and family.

5. Proactive Media.

One way to make members of the judiciary more accountable and socially responsible is to promote efficient and proactive mass media. The media is important because it has the ability to investigate and expose corruption and corrupt practices. However, journalists need more legal protection because in some cases journalists who discover acts of corruption are victimized.