

Judicial Reform in Latin America

An Assessment

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Introduction

Judicial reform has long been seen as a prerequisite for the consolidation of democracy and for sustainable development in Latin America. Most countries in the region approached the last decade of the twentieth century with weak, politically vulnerable, and ineffective judicial institutions. Few were capable of holding executive power in proper balance, of guaranteeing the effective observance of basic human and civil rights, of promoting an atmosphere conducive to economic development, especially to foreign and domestic investment, or of providing basic security to citizens. They suffered from antiquated criminal codes, poorly organized and underfunded courts, inadequate training and compensation of judges, judicial officials, and police, legal procedures that minimized transparency, and often-deplorable prison conditions. In recognition of these problems and with the encouragement and support of the international community, many countries in the region have undertaken programs and projects to overhaul their judicial systems and institutions. These efforts have spanned the gamut, from constitutional reform and the implementation of new criminal and civil codes, to structural change in the administration of justice, to far less ambitious schemes aimed at making technical improvements to the existing systems. The reform process over the past 40 years has gone through various stages, from mechanistic adjustments during the 1960s aimed at improving the delivery of judicial services, to systematic approaches in subsequent decades. The latest and most concentrated wave of reforms began in the mid-1990s on the heels of the consolidation of formal democracy throughout the hemisphere. During this phase, nearly 1 billion dollars in financial support was forthcoming from the World Bank, the Inter-American Development Bank (IDB), the United Nations Development Program (UNDP), nongovernmental institutions, and individual donor nations, including the U.S. Agency for International Development (USAID), for efforts to reform the administration of justice. These efforts were meant to be long-term projects for which completion would not be expected until a decade or more later, so many are still in progress.

The results of the decadelong judicial reform process in Latin America are neither obvious nor easily measured. Some countries have clearly made substantial progress. Chile, for example, adopted a new code of criminal procedure, which entered its final, key phase of implementation in the metropolitan region of Santiago in June 2005. The Chilean example is broadly viewed as the most successful in the region, given its ambitious scope, the resources dedicated to the task, and the political commitment to see it through. At the other end of the spectrum is Venezuela, where efforts and considerable investments in reform in the justice system have been neutralized by widespread executive encroachment on the judiciary, resulting in the almost total loss of independence of that latter, important branch of government.

With an eye toward evaluating and measuring progress in judicial reform in Latin America during the latest wave of the reform process, the Americas Program of the Center for Strategic and International Studies (CSIS) in Washington, D.C., and the Justice Studies Center of the Americas¹ (CEJA in Spanish) in Santiago, Chile, commissioned a series of papers on the topic that served as the basis for a conference held on June 7 in Washington, D.C. The individual studies, drafted by experts in the field, evaluated the judicial reform process in Argentina, Chile, Peru, Colombia, Venezuela, and Guatemala. Using these papers as points of reference, CSIS and CEJA brought together a group of distinguished experts in the field of legal reform in Latin America from universities, policy centers, civil society organizations, and the international financial institutions to analyze the current state of the administration of justice in the region. The June 7 conference was organized along the lines of three panels: two dealing with the individual country studies, with the author of each paper making an oral presentation followed by comments from a United States-based expert, and a final panel of four leading authorities providing regional analysis. This report summarizes the work of each of the three panels in the conference and outlines the conclusions reached and the recommendations for policymakers. The purpose of the project throughout was a practical one aimed at clarifying a regional picture of progress to date, or lack thereof, in judicial reform and at providing concrete suggestions to meet the challenges still pending. Electronic links to the country papers are listed in the text of this report.

¹ The Americas Program at CSIS and the Justice Studies Center of the Americas wish to express their gratitude to the Open Society Institute for its generous support of this project.

Panel I: Case Studies

Argentina

Alberto M. Binder, director of the Public Policy Center for Socialism (CEPPAS) in Buenos Aires, focused his presentation on Argentina.

Noting that the Argentine system of justice reflects the U.S. model of both federal and state courts, Binder discussed the many challenges of the Argentine system and the effort to “transform” the judiciary from a condition of “complicity in state terrorism” during the dictatorship to a condition of being at the service of a democratic system. A first, key step was the removal of judges who were compromised by their association with the military regime and the reinstatement of those illegally removed during the dictatorship. According to Binder, however, after 20 years of democracy, the process of naming judges is still subject to political pressure. A second step was to begin to remedy the deficiencies of the judicial system, a goal established early on after democracy was restored in 1982. The goal of “changing the old colonial inquisitional mold” of judicial procedure to an adversarial system has only been “partially attained,” with judges still addicted to old practices. A permanent jockeying exists between “reform and manipulation,” with the two not always at odds with each other. Binder noted several “basic visions” for carrying out a strategy of judicial reform in Argentina. The first focuses primarily on the administration of justice—stemming from the professional and human deficiencies in the system that can only be resolved by naming better judicial authorities. The second vision focuses on technical and administrative deficiencies and on the notion that the justice system functions poorly because technology is “weak, chaotic, and inadequate.” A third vision postulates the need to break the traditional hold of past practices of the inquisitorial system, with its authoritarian practices. According to Binder, these three visions of reform must be integrated into a clear strategy for judicial reform that is constantly tested and adjusted. Results to date have been very haphazard, with some important advances in the area of penal practice but very little on the civil law side, with some states (Mendoza, Córdoba) showing strong progress but other states and the federal judiciary lagging behind. Initial plans for a sweeping reform of penal procedure proposed immediately after the transition to democracy in the mid-1980s failed to prosper, giving way to far less ambitious changes that left the power to investigate crimes in the hands of judges (*jueces de instrucción*) and cancelled a transition to the use of juries. The constitutional reforms of 1994 did, however, establish the autonomy of the Attorney General’s Office and create a federal Public Defender’s Office.

Binder concluded that the many and diverse steps taken at both federal and state levels to carry out judicial reform have been difficult to sustain and have fluctuated to the point where they have become enervated. A permanent standoff occurs between the forces of reform and those who seek the political manipulation of the judiciary, forces that are distributed equally in all the key institutions: the executive, Congress, political parties, academia, and lawyers’ associations. Early efforts to promote a coherent national policy of judicial reform did not prosper, and in the two decades since democracy was restored, the debate between reformers and those resistant to change has been a constant. Although a certain “social consensus” and “technical consensus” in favor of integral judicial reform has

been attained, there is no political consensus to move the process forward. In an environment such as this, smaller-scale “impact” reforms should be carried out to improve the quality and delivery of judicial services. In general, far more progress has been made on the criminal than on the civil law side and at the micro level rather than at the top.

Commenting on Binder’s presentation, **Russell Wheeler**, president of the Governance Institute and guest scholar at the Brookings Institution, focused on the “lack of institutionalization of the judicial branch” in Argentina as a key factor in holding back the modernization of the Argentine judiciary. The process of judicial reform has been driven by the work of individual judges at the federal and state levels rather than by directives from the executive branch, which maintains an impulse to manipulate rather than empower the judiciary. The selection of judges in Argentina remains a very subjective process, with very few indicators in place to gauge, let alone measure, improvements in the output or performance of judges individually or collectively. Public confidence in the judicial branch remains low, weakening efforts to recruit qualified and dedicated candidates for judgeships. Structural reforms rarely accomplish much without improvements in the human dimension.

For a copy of Binder’s paper, please go to:

http://www.csis.org/media/csis/events/060607_judicial_binder.pdf.

Chile

Cristián Riego, academic director at the Justice Studies Center of the Americas, portrayed Chile as a success story of judicial reform—at least in the area of criminal law—with major challenges still to be overcome. He traced three periods in the reform process, the first beginning immediately after the restoration of democracy in 1990 and based on a goal of rebuilding a legal structure dominated by a Supreme Court that had been the “operative arm” of the Pinochet dictatorship. A package of reforms was developed to strip the Supreme Court of some of its power and create a Council of Magistrates (*Consejo de la Magistratura*) to control the recruitment and career path of judges, in addition to other measures. The Supreme Court itself and the conservative opposition to the new Aylwin government worked to water down many of the proposals; a judicial academy, however, was created to help train judges.

The second stage of judicial reform in Chile came with the approval in 1995 of a major legislative package to accomplish integral reform of the criminal justice system. Under the terms of the new legislation, the old inquisitorial system with judges carrying out investigations, the widespread use of pretrial detention, and closed judicial proceedings based on mountains of written documentation evolved into a thoroughly reformed accusatorial system, with public prosecutors carrying out investigations, a presumption of the innocence of the accused, transparent, oral procedures, vastly expanded and improved public defense services, three judge panels adjudicating major criminal cases, and broad modernization of administrative procedures. This reform package not only enjoyed strong political support from the administration and the legislature, but was broadly consulted in the judicial and business communities, the universities, and, importantly, the College of Lawyers. It was phased in over a 10-year period (1995–2005) with the final stage of

implementation taking place in greater Santiago. Bipartisan political support resulted in very sizeable resources dedicated to the effort—the Chilean government financed the reform entirely with its own funds, with a fourfold increase in funds dedicated to the justice sector. Considerable analysis and measurement of results were undertaken, with a large effort at training judges, prosecutors, public defenders, and judicial staff all along the way. The government made a major investment in judicial infrastructure, including the construction of new, modern courthouses around the country, new jails, and a sophisticated upgrade in technology. When finally in place, the new system resulted in a vastly more efficient, transparent, and, almost certainly, fair administration of criminal justice, with far greater respect for the rights of the accused.

A third stage of reform is still in process, involving an extension of the reforms in criminal justice procedure to other areas: family courts, juvenile courts, labor courts, and civil courts. Unfortunately, according to Riego, reforms in the function of family courts have largely failed, leading to a postponement in changes in juvenile courts and in civil courts. The conditions that made possible the strong success in criminal justice reform—careful planning based on broad consultation and consensus, backed by political support and sufficient financing—were lacking in the case of family court reform. Family, juvenile, labor, and civil reform packages require more investment in the institutions and personnel needed to administer these programs, according to Riego. Without the same rigorous attention to detail and political and financial backing, the success of the penal reform process will not be reproduced in other sectors.

Fay Armstrong, administration of justice officer of the Office of Policy and Planning in the Bureau of Western Hemisphere Affairs, Department of State, responded to the presentation of Riego by asserting that Chile constitutes a model case of judicial reform. While the political will to carry out judicial reform can never be taken for granted in any country, it is absolutely essential in achieving success, and in the case of Chile, it began to take shape even while the Pinochet dictatorship was in power, leading in 1990 under the democratic Aylwin regime to the creation of a study commission on judicial reform that began laying the foundation for the criminal code reform to follow. The executive branch set the tone for the reform process, building consensus throughout the government, judicial branch, academia, and the public at large and making a comprehensive effort to change the system. Success lay in the degree to which political will was achieved.

For a copy of Riego's paper, please go to:
http://www.csis.org/media/csis/events/060607_judicial_riego.pdf

Peru

César Azabache, partner in the law firm of Vascones & Azabache of Lima, Peru, outlined the state of the judicial reform process in Peru, underscoring that there is very low public confidence in Peru's legal system and in the impartiality and effectiveness of judges. This stems in part from the fact that the system rarely reaches down to the municipal level in Peru, especially outside of main cities, and from the subordination of the legal system to

political influence and corruption during the authoritarian rule of Alberto Fujimori (1990–2002). Although there is strong public recognition of the weakened state of the judiciary and the need for reform, lack of sustained political support for the reform process and coordinated action for reform between the public sector and civil society has held the process in check. Azabache traced the expansion of the judicial system since the 1950s, noting that even with more and better-paid judges and larger budgets for the judicial sector, improvements in the delivery of justice lagged far behind improvements in areas such as health and education. The reform process received greater attention following the fall of the Fujimori regime, culminating in 2003 in the creation of the Special Commission for the Integral Reform of Administration of Justice (CERIAJUS in Spanish) by means of congressional legislation. Representatives of government and civil society working under the umbrella of CERIAJUS produced a National Plan with originally more than 170 specific projects, few of which were carried out or translated into law. This said, there have been some important improvements in the delivery of legal services, including the creation of anticorruption courts to investigate crimes against public administration that occurred during the Fujimori regime and to monitor government ethics, the establishment of seven commercial courts in Lima to resolve disputes, more effective use of the Constitutional Tribunal in interpreting the constitutionality of legislation, and more extensive use of justices of the peace for low-level dispute settlement. These improvements notwithstanding, the reform process in Peru has failed to improve public confidence in the system and to overcome large backlogs in pending cases (a typical case brought to trial still takes two to three years to resolve), ineffective distribution of caseloads, and widespread corruption among judicial branch employees.

Katya Salazar, programs director of the Due Process of Law Foundation, in her response to the presentation of Azabache, seconded the view that public opinion in Peru holds the judicial in very low esteem, stemming from inefficiency and widespread perceptions of corruption. While judicial salaries have improved substantially, as have “dramatic” increases in budgets for the judicial sector under President Alejandro Toledo, the results of reform efforts in Peru are disappointing. Only a small percentage of the proposals made by CERIAJUS have been carried out, and some of the new tribunals, such as the anticorruption courts, have produced meager results. Nonetheless, the incoming García government should redouble its efforts at moving the judicial reform process ahead by refocusing on the projects and efforts made by CERIAJUS and should avoid the temptation to reinvent the wheel. What has been successful is the work of the Constitutional Court in reviewing the constitutionality of legislation.

For a copy of Azabache’s paper, please go to:

http://www.csis.org/media/csis/events/060607_judicial_azabache.pdf

Panel II: Case Studies

Colombia

Eduardo Bertoni, executive director of the Due Process of Law Foundation, presented the case study of Colombia by referring to a paper prepared by **Alfredo Fuentes**, judicial program director of the Andean Community. He began with a summary of key elements in the Fuentes paper and then made comments of his own. Fuentes focused on two key events shaping the judicial reform process in Colombia: the constitutional reforms of 1991 and 2002. The 1991 reforms, which laid the juridical and institutional basis for stronger respect for human and civil rights in the country, also triggered a process of judicial reform. A Constitutional Court of nine justices was established to hear complaints raised by private citizens of unconstitutional actions on the part of government or specific government officials, with the greater responsibilities of the court assigned to the Office of the Procurator General of the Nation (*Procuraduría General de la Nación*) and to the national public defender (*defensor del pueblo*) in monitoring and ensuring respect for human rights. The reforms created the Office of the National Attorney General (*Fiscal General de la Nación*), charged with carrying out the investigation and prosecution of crimes and establishing that civilians under no circumstances would come under the jurisdiction of military courts. A Superior Judicial Council (*Consejo Superior de la Judicatura*), including judicial authorities, was created to supervise the administration of justice and to promote judicial independence.

These reforms were accompanied by substantial increases in spending on the judicial sector by the government of Colombia and stimulated a huge increase in demand for justice services, above all in petitions by citizens involving labor rights, access to due process, and complaints of violations of constitutional rights by government authorities. There was also a large spurt in disciplinary charges brought against members of the judiciary. The 1991 reforms had important shortcomings, however, above all by not reforming the inquisitorial process governing criminal cases, for which the Attorney General's Office not only filed charges against the accused but had an important role in carrying forward the judicial process and even in defending the accused. This led to a host of abuses, with widespread impunity resulting from cases that never went to trial or, conversely, with culpability predetermined by prosecutors and judges merely imposing sentences.

The 2002 constitutional reforms addressed these shortcomings by stripping prosecutors (*fiscales*) of their judicial function in an accusatorial system based on oral, public trials and where there is ample access to judicial review. With a new Code of Criminal Procedure, a shakeup of the judicial police and more resources devoted to the Office of the Public Defender, the reformed system was implemented in the municipalities of Bogotá, Manizales, Armenia, and Pereira, with countrywide implementation scheduled for 2009. According to Fuentes, the early performance of the new accusatorial criminal system has been highly positive, with cases moving through the system more efficiently and with greater respect paid to the rights of the accused.

While seconding many of Fuentes's conclusions, Bertoni added conclusions of his own. He lamented that, as in the case of other Latin American countries, reforms in penal procedure were not paralleled by reforms in civil, labor, and family law. The state continues to put pressure on prosecutors, calling into question their independence. Although the efficiency of prosecutors is unquestionable in terms of resolving criminal cases in a shorter time, Bertoni expressed the concern that this has resulted from plea-bargaining agreements or from extracting faster confessions, as well as from receiving the lion's share of the overall judicial budget. He noted a constant tension between the desire of the state to improve the always-challenging security situation in Colombia, the need to consolidate respect for fundamental rights, and the rivalry between the Supreme Court and the Constitutional Tribunal, with the latter's jurisdiction often suffering limitations.

For a copy of Fuentes's paper, please go to:

http://www.csis.org/media/csis/events/060607_judicial_fuentes.pdf.

Guatemala

Luis R. Ramírez, director of the Instituto de Estudios Comparados en Ciencias Penales de Guatemala, presented the case of Guatemala. He outlined efforts during the course of Guatemala's history to overcome the colonial legacy of juridical procedure that is based on inquisitional practice, starting with the failed attempt during the administration of President Mariano Gálvez in 1834 and culminating in the new Penal Process Code of 1994. The new code, modeled on German, Italian, and other examples, was a bold move that substituted public and oral trials for the inquisitorial model, redefined the role of public prosecutors, police, and judges, expanded the rights of the accused, and allowed for speedier trials. The example of Guatemala is frequently studied as a case of thorough reform of penal code procedure based on international models applied as a result of study and consultation between leading legal authorities in Guatemala and from other countries. The finalizing of peace agreements between the government and the armed insurgent movement in 1996 added an element of stronger political backing to the judicial reform process, as well as created a new civilian police force and removed the military from law enforcement.

According to Ramírez, an analysis of the reform process 12 years after it took effect yields two standard positions—an “optimistic” view that the process has been largely successful but needs strengthening, and a “pessimistic” view that the process has failed—and cites growing crime and violence, frustration with what is perceived to be impunity for many grave crimes, and an ineffective and slow judicial process as evidence. Neither vision is in and of itself valid. Rather, what is needed is a careful analysis of changes, in light of their effect on citizens. The reforms and the subsequent peace accords generated an enormous demand for access to justice and raised expectations for its delivery. Ramírez outlined a number of overall conclusions indicating persistent problems in putting the new judicial system into effect and winning public support for it. Only a very small percentage of cases go to trial and even major criminal cases seldom reach the stage of a verdict. The new National Civil Police is focused on crime prevention and reacting to crime rather than on serving as the investigative arm of the Public Prosecutor's Office (*Ministerio Público*) in preparing evidence for trial. Rising levels of criminal activity, especially crimes committed

by youth gangs, put enormous pressure on a legal system that is unprepared to respond. Considerable friction has arisen between the goal of protecting the rights of the accused and guaranteeing respect for human rights in general in the wake of the peace accords and the growing perception—fanned by opponents of the judicial reform process—that the reforms have fostered impunity for criminals and overlooked the rights of victims of crime. Those who would seek to return Guatemala to its authoritarian past exploit these concerns by portraying policies that protect human rights under the accusatorial system as being soft on crime. Strong remnants of the former inquisitorial practices remain entrenched in the system, as does a “cultural inertia” that hinders reform. In 2005, the Supreme Court issued new administrative rules that have promoted greater efficiency in the courts and that reduce paperwork, but the key ingredient in consolidating judicial reform in Guatemala remains the political will to move the process forward with sufficient resources and a commitment to respond to the “social demand” for greater access to justice.

Christina Biebensheimer, chief counsel of the Justice Reform Practice Group of the World Bank, responded to Ramírez’s presentation. She expressed admiration for the “courage” displayed in moving the judicial reform process forward in Guatemala and the cooperation between reformers in Guatemala and the international community in working toward this goal. The reform process in Guatemala was made all the more complex because it took place in an environment affected by severe civil conflict and high levels of violence. The Guatemalan example points out the need for a more effective means to measure the progress of judicial reform in developing research models capable of gauging which measures have succeeded and which have not and in understanding the variable of rising public demand for judicial services. She raised the issue of the justices of the peace, who have played a visible role, especially in rural areas. Following up on Ramírez’s observations, she reiterated that a key underlying need is to convince public opinion in Guatemala or any other country of the benefits and utility of judicial reform.

For a copy of Ramírez’s paper, please go to:
http://www.csis.org/media/csis/events/060607_judicial_ramirez.pdf.

Venezuela

Rogelio Pérez Perdomo, director of the Law School of the Universidad Metropolitana in Caracas, covered the case study of Venezuela. The judicial reform process in Venezuela, initiated at mid-decade in the 1990s, basically “was concluded” in 2004. The process was long identified with the larger project of “reform of the state,” with considerable funds and consultative expertise supplied by the World Bank. Following the coming to power of President Hugo Chávez in 1999, the judicial reform process has been tightly linked to the constitutional and political changes made by Chávez, resulting in the domination of the judicial sector by the executive branch of government.

Venezuela’s prereform judicial system was marked by inefficiency, widespread corruption, very low levels of resources, and the heavy influence of the two leading political parties of the country. With the decline of the parties in the mid-1990s, a number of steps were taken to improve the quality and efficiency of the judicial system. Justices of the peace were

created in 1994 to reach out to underserved communities, and in 1998, a new Organic Code of Criminal Procedure (*Código Orgánico Procesal Penal*) established an accusatorial system with oral procedures, open trials, the use of plea bargaining, and criminal investigations carried out under the direction of district attorneys. The 1999 constitution abolished the Judicial Council (*Consejo de la Juzgatura*) that had previously governed the recruitment, training, and discipline of judges, as well as the Supreme Court itself, replacing them with a Supreme Tribunal of Justice having both functions. In May of 2004, an organic law increased the number of magistrates on the Supreme Tribunal of Justice to 32 members who are named by a simple majority vote of the National (legislative) Assembly, which is dominated by forces loyal to the president. According to Pérez Perdomo, the single most significant change in the judicial system in past years has been its subordination to political interests, with the executive-dominated Supreme Tribunal taking the lead in advancing the political agenda of the government and undermining its opponents. Although the reform process has led to some successes in terms of improvements in infrastructure and technology and in expediency in resolving cases in areas such as labor law, its record in prosecuting criminal cases, especially in the face of a spiraling wave of homicides, kidnappings, and robbery, has been poor. Corruption remains widespread within the judicial system, and the Supreme Tribunal has carried out several cycles of “purges” of lower court judges whose legal decisions have run counter to government positions. While the decisions of the Supreme Tribunal are now made public, the activities of lower courts remain shrouded, with very little statistical information available with which to track the efficiency of the system. Many of the negative aspects of Venezuela’s traditionally corrupt and ineffective legal system have persisted, with an even greater degree of political influence exercised over the judiciary than ever before.

Margaret Sarles, division chief, Office of Democracy and Governance, Bureau for Democracy, Conflict, and Humanitarian Assistance of the U.S. Agency for International Development, drew a number of conclusions from the report and presentation of Pérez Perdomo. One conclusion is that it defines the “electoral authoritarianism” of the Chávez regime, with the justice system supporting this authoritarian political system. The second was that foreign support played an important role in getting the reform process in Venezuela started, and that the politicization of the judiciary is bringing that support to a halt. Another is that judicial systems in Venezuela and elsewhere reflect the strengths and weaknesses of overall political environments, with the old system (pre-1994) highly influenced by the political parties. Venezuela never enjoyed real judicial independence, and conditions continue to worsen. On the technical side, very poor statistics make any effective evaluation of the workings of the judicial system difficult to measure.

For a copy of Pérez Perdomo’s paper, please go to:
http://www.csis.org/media/csis_events/060607_judicial_perez.pdf

Panel III: Conclusions

This panel, composed of four experts, drew conclusions from the case studies presented and provided their own analysis assessing the state of judicial reform in Latin America.

Linn Hammergren, senior public sector management specialist of the World Bank, underscored the need to “take stock” of progress in moving forward the judicial reform agenda in Latin America and the importance of the six case studies presented in helping that process. She sensed “general disappointment” with the progress of judicial reform in the region and underscored the need for better statistics and empirical evidence to track the issues. In evaluating the reform process, it is useful to return to basic questions, not only on what has or has not been accomplished in moving the process forward and the reasons behind these variables, but also on other, still more basic issues. One such issue is the matter of why judicial reform is needed—there seems to be little public demand for it, and the “users” of the system are more concerned about it than anyone else. The general public is concerned, rather, about the outcome of reform, especially about its impact on lowering crime and improving judicial services. To make the judicial reform glass half full instead of half empty, Hammergren pointed to a number of key needs to be met: a clearer sense of the goals of reform—what they are meant to accomplish—and the prioritization of these goals. Progress must be made in measuring improvements toward these goals through the production of quality statistics. Benchmarks must be established that are measurable. Tradeoffs between investing in judicial systems, satisfying demand for services, and holding down costs clearly must be made. The independence and accountability of the judicial sector are key, with Venezuela being a prime example of backsliding. Without transparency and accountability, judicial systems in the region will lose legitimacy and fall further prey to executive encroachment.

Claudio Grossman, dean of the Washington College of Law at American University, stressed the central role of the state in promoting and sustaining the judicial reform process, citing Chile as a case in which the state successfully drove the process from start to finish. In Chile, the transformation of the judiciary, from the inquisitorial system with its widespread use of pretrial detention, was firmly supported by public opinion because of the myriad human rights abuses perpetrated during the dictatorship using judicial mechanisms. Reform of the judiciary was seen as an integral factor in the transition from dictatorship to democracy in the hemisphere, with Venezuela as an exception. Political will for change, especially if it reflects a consensual position among political parties—as in Chile—is a major factor in sustaining judicial reform. The reelection of President Alvaro Uribe in Colombia could help drive the process, but impunity for major perpetrators of crime must be overcome—it is not possible to successfully transform a judicial system without purging it. The Inter-American legal system—the Human Rights Commission and Court—are key agents of change supporting judicial reform in the Americas and must be seen as such by Organization of American States (OAS) members. Nongovernmental institutions and universities should play a more active role in promoting judicial reform. Finally, Grossman postulated that women’s groups could be major agents of change in judicial practice in Latin America.

Douglas Cassell, professor of law at Notre Dame University, stressed that the judiciary cannot be reformed without a reform of justice, and that the judiciary is part of a much larger systemic whole. What the people of Latin America want is criminal justice reform. There is broad demand for systems that reduce violent crime, punish the guilty, do not punish the poor and the innocent, and are honest and efficient. In measuring the success or failure of judicial reform, a key factor should be trends in violent crime and impunity, but this rarely happens. Justice reform entails not only reform of the courts or judicial systems, but reform of the police as well. Policy planners must step back from the reform process to take a more global perspective, specifically on the steps that must be taken to meet public demand.

Juan Enrique Vargas, executive director of the Justice Studies Center of the Americas (CEJA), underscored the fact that while there have been improvements in justice systems in Latin America over the past 15 years, the public remains far from satisfied and many demands have not been met. Judicial systems in many countries remain very small and have persistent institutional problems despite sharply increasing levels of crime. Expectations for improvement are high, outstripping the capability to address them. Vargas listed several key reasons why judicial reform in Latin America has not produced better results: lack of political will on the part of government; lack of proper resources (although this factor should not be overemphasized, because some successful efforts have taken place under precarious and difficult circumstances, as was the case in Colombia and Guatemala); and reform policies that were poor from the start. Judicial reform is closely linked to personal security and becomes more popular when promoted in such terms. Looking forward, greater effort needs to be spent on enlisting the support of civil society for the reform process and educating the media on the issue of judicial reform. Technical reform—a “second generation” of reforms, needs to be carried out with a close eye to detail and practicality. Much more attention has to be dedicated to the administration of justice systems, specifically to setting up efficient information systems and to training judicial authorities. Considerably greater effort needs to be spent on the measurement and evaluation of progress in order to correct mistakes and recalibrate policy.

Overall Assessment/Recommendations

Based on materials presented and discussion at the conference, an overall assessment of the judicial reform process is provided below, with recommendations for policymakers on better advancing the process.

Assessment

- While efforts at judicial reform in Latin America since the mid-1990s have produced some impressive results, perhaps the most outstanding being the reform of the criminal justice system in Chile, the overall record is disappointing, having failed to meet the high expectations created, largely due to poorly functioning new systems that are slow, lack transparency, pay scant attention to users, and lack independence in decisionmaking.
- In many countries coming on the heels of the transition from dictatorship to democracy, the judicial reform process was viewed as a natural component of democracy and stimulated broad demand for access to justice, legal services, and judicial protection from the public. In general, however, it has been difficult to reach a broad consensus on sustaining credible, long-term public policies on reform.
- The effectiveness of judicial systems in the region in protecting human and civil rights has improved since the mid-1990s, but these advances are often overshadowed by public dissatisfaction with the poor personal security situation in the region, which is brought on by a crime wave that police and judicial systems are viewed as being incapable of handling.
- The economic and political crises that have affected many countries in the region—Argentina, Ecuador, Peru, and Venezuela, for example—have had strong repercussions on the ongoing judicial reform processes, which have proved to be highly susceptible to unstable conditions.
- Although there has been some progress in shoring up the independence of judiciaries in the region, executive branch pressure on the judicial sector remains a constant challenge, particularly during times of economic or political crisis, as demonstrated in the cases of Argentina, Ecuador, Peru, and Venezuela, where the judiciary have all come under pressure from the executive.
- The most successful examples of judicial reform have come from the area of criminal law, where there has been important progress in dismantling the inquisitorial systems of procedure that led to authoritarian practices, above all widespread abuse of pretrial detention, and their replacement by accusatorial procedure that is more transparent and respectful of the rights of the accused.
- With the greater use of accusatorial procedure, criminal investigations and prosecutions are directed by public prosecutors working with police rather than with

judges, trials are public and based on oral procedure, access to legal defense has been made easier, especially with the creation and strengthening of public defender's offices, and cases are handled with more dispatch.

- Progress in the area of criminal justice reform has largely not been matched in other areas, such as civil law, family law, or labor law, even though there is much public demand for services in these areas.
- Even in the criminal law case, remnants of the old inquisitional systems still persist, with considerable recalcitrance on the part of judges, lawyers, law professors, and judicial administrative authorities to give them up, in part due to a cultural inertia against change.
- The record on administrative and technical improvements in the judicial sector is mixed, but with some notable gains in the use of information technology to reduce caseloads.
- Although rural areas are underserved by judiciaries in the region, the greater use of justices of the peace and small claims courts has improved access to justice outside of larger cities and in poor urban neighborhoods.
- Governments in the region have been spending proportionately more on the justice sectors since the reform process began in the mid-1990s, although the quality of services rendered does not always track with increases in budgets.
- Recruitment, training, and supervision of judges and judicial authorities remain a problem in the region. Although there have been advances in establishing more competitive and transparent means of designating judges, the influence exerted by governments, elements within the judiciary, or even lawyers is still sizeable, and corruption and lack of transparency in handling cases and in sentencing remain prevalent concerns.
- Improvements in the delivery of judicial services or progress in meeting reform goals and objectives are difficult to track in the region because of very poor statistics on the judicial sector.
- Despite improvements in the efficiency, fairness, and transparency of criminal justice procedures in the region, the incapacity of police to deal with rising crime rates and the poor investigative and professional capabilities of prosecutors and police have led to a poor rate of convictions for major crimes and to widespread public concern that even violent criminals can operate with impunity.

Recommendations

Promote political support for long-term policies leading to sustained efforts at judicial reform—including during periods of crisis:

- Generate broad-based agreement on a basic judicial reform agenda, following models of “agreements for justice” (pactos por la justicia) arrived at in several countries. Projects supported by international assistance should conform to this agenda.
- Promote the exchange of relevant experiences and information across the region to permit benchmarking among judicial systems as a means of encouraging change. International organizations can play an important role in this effort.
- Give preference to reforms initiated in areas that are most sensitive and urgent and that are capable of being reproduced. This conforms with the strategy carried out in most countries of first emphasizing reforms in criminal procedure, which is a priority concern of citizens. Also, give special weight to reforms that can demonstrate success over relatively short timeframes, in order to enlist political support for change.
- Enlist the participation in the reform process of sectors having a stake in specific improvements in justice. In the case of criminal justice, for example, human rights organizations and organizations representing victims of crime should be involved. In the case of civil law reform, consumers and the business community should be represented. This helps ensure that the reform agenda remains intact and that the process is not co-opted by the legal community or by the judiciary itself.
- Set concrete goals that can be measured in quantifiable ways, promoting evaluation as a fundamental practice and ensuring that participants in the reform process adhere to the goals and objectives established. Funding provided for judicial reform should likewise be disbursed in line with the accomplishment of the established goals.
- Task credible, independent entities—domestic or international—with responsibility for the periodic evaluation of the reform process and the public dissemination of their findings.
- Ensure the careful technical planning of reforms, with particular emphasis on producing short-term successes. This implies prioritizing areas where relatively rapid progress can be achieved.

Promote a coherent reform process aimed at integral transformation of judicial institutions:

- Conduct a comprehensive diagnosis of the justice sector and of the challenges to the effective administration of justice, based on qualitative and quantitative information.
- Develop strategies for long, medium, and short-term reform, with the assumption that there is insufficient political will, human and fiscal resources, and technical expertise to carry out all needed reforms simultaneously. It is necessary to have a

long-term vision regarding reform of the judicial system, and also, to establish stages that should be followed. Priority should be given to those reforms most urgently needed, where rapid progress can be achieved, where the greatest impact can be felt, and where progress can strengthen the potential for further reform.

- Improve the technical capacity to plan and execute justice reform. This requires the formation of interdisciplinary teams composed of representatives of national legal communities and professionals from other disciplines who have an interest in and are affected by judicial reform. By combining their efforts, they can design plans that reflect real public policy, transforming judicial reform from a simple rule of law concept by integrating variables involving efficiency, viewpoints of consumers of legal services, and effective use of public funds.
- Avoid the common experience in Latin America of exchanging one law for another without making the necessary adjustments to the organization and function of the institutions of the judicial system that are affected. Reforms frequently do not go beyond a mere change in statute and, if attempted, are undercut by lack of planning for procedural/practical changes required to carry them out.
- Ensure that all of the institutions affected by judicial reform are included in the reform process. For example, reform in criminal law procedure will be weakened if it includes only judges and prosecutors but not public defenders or investigative services. The need for more effective policing is critical throughout the region, and it is therefore essential that the police function, especially the investigative arm of law enforcement, be carefully integrated by planners into the reform process.
- Pay close attention to detail in the implementation of reform, given that reforms must address the need for cultural changes in those responsible for making the system work. It is necessary to understand what current practices need to be changed and then to develop training programs for judicial workers not only to impart the values and culture of the new system but in order that they fully understand the new procedures they will be carrying out.
- Analyze carefully the resources, both human and material, needed to carry out the reform process, including infrastructure, equipment, and personnel, and make certain that adequate financial resources are available. The impact that changes brought about by judicial reform may have on the training of lawyers and judges, on recruitment for the judicial career, and on the legal profession in general must be taken into consideration. Planners should make provisions for the discharge of unneeded or unqualified judicial employees or for encouraging them to retire.
- Strengthen the capacity of judicial authority. In the region, greater attention is paid to which entity—supreme courts or councils or justices—should be in charge of the process rather than to the responsibilities that this entity should have. In the end, it is essential that responsibilities for the execution of the judicial reform process—as opposed to its planning—be carefully delineated. Regardless of where the authority eventually resides, decisions should be seen as legitimate and should be based on technical, professional evaluation.

- Extract lessons learned from preliminary efforts at reform that can be applied to successive reform processes. Extrapolated experience from the criminal justice reform process, for example, should be applied to civil, administrative, juvenile, family, and labor law reform.

Improve the efficiency of the judicial sector and broaden transparency:

- Generate accurate, timely, and sustained information on all aspects of the justice sector. The ability to plan, set goals, analyze policies, and measure results in the judicial reform process is predicated on the availability of information.
- Improve the collection, processing, and availability of judicial statistics. Meaningful statistics should be seen not only as a matter of the administration of justice but as a means of demonstrating to society as a whole how public resources are being used and how goals are being met. Information regarding judicial budgets and statistics on judicial activities must be made public, ideally on a public Web site. Judicial statistics should be generated as a subproduct of a national information plan.
- Track public and international investment in the judicial sector according to sector-by-sector baselines, in order to analyze results.
- Improve public access to court records not only to facilitate better administration, but also to bolster public confidence in the new oral argument procedures in place.
- Strengthen transparency in judicial systems to combat corruption and promote competition and openness in the process of recruiting and selecting judicial authorities.

About the Authors

Peter DeShazo was named director of the CSIS Americas Program in September 2004. Previously, he was deputy assistant secretary of state for Western Hemisphere affairs. During his career in the U.S. Foreign Service, Ambassador DeShazo served as deputy U.S. permanent representative to the Organization of American States (OAS), where he was elected chair of the OAS Committee on Administration and Budget. He also directed the Office of Public Diplomacy and Public Affairs of the Bureau of Western Hemisphere Affairs at the State Department and served at U.S. embassies and consulates in La Paz, Medellín, Santiago, Panama City, Caracas, and Tel Aviv. Dr. DeShazo received his B.A. from Dartmouth College and Ph.D. in Latin American history from the University of Wisconsin at Madison and did postgraduate study at the Universidad Católica de Chile. He was a Fulbright scholar, Reynolds scholar, and Ford fellow and is the author of *Urban Workers and Labor Unions in Chile, 1902-1927* (University of Wisconsin Press, 1983) and articles on the industrial relations and social history of Latin America.

Juan Enrique Vargas is an attorney-at-law with a master's degree in management and public policy from the University of Chile. In 2000, he was named the first executive director of the Justice Studies Center of the Americas, a position he still holds. He currently teaches law at the School of Law of the Diego Portales University, where he was also director of the Legal Studies Research Program (1999–2000). He has consulted regularly on judicial reform projects in Argentina, Colombia, Chile, Costa Rica, Ecuador, Panama, Paraguay, Peru, Uruguay, and Venezuela since 1993. Prior to his current position, he was the director of the Judicial Development Center of the University Promotion Corporation (from 1991 to 1997) and adviser to the Chilean Ministry of Justice (from 1990 to 1998). He also participated in the Truth and Reconciliation Commission in 1990 and in the Human Rights Program of the Academy of Christian Humanism from 1986 to 1989. Mr. Vargas is the author of numerous publications on law and the judicial system.

The Americas Program of the Center for Strategic and International Studies (CSIS), of Washington, D.C., and the Justice Studies Center of the Americas (JSCA)², headquartered in Santiago de Chile, have published a series of articles on judicial reform in Latin America in order to evaluate and assess said process. The texts are based on the presentations made at a conference held in Washington on June 7, 2006. The authors are experts in the field who present evaluations of the judicial reform process in Argentina, Chile, Peru, Colombia, Venezuela and Guatemala. CSIS and JSCA organized the event, which brought together distinguished specialists in Latin American judicial reform from universities, policy analysis centers, civil society organizations and international financial institutions in order to study justice administration systems in the region using the above-mentioned reports as points of reference.

This publication presents a summary of the presentations made during the conference, the conclusions reached, and recommendations for policymakers. From the beginning, this project had a practical purpose: to provide a clearer image of the progress that has been made (or that has not been made) in the area of judicial reform along with specific suggestions regarding remaining challenges. The text includes links to online versions of the country reports.

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