

Judicial Reform in the Americas

by James Buchanan

EXECUTIVE SUMMARY

The health of judicial systems has become the subject of increasing attention and concern throughout the Americas. The importance of judicial systems for promoting democratic governance, regulating market economies and ensuring social security has been widely recognized in recent years, yet so has their generally poor performance throughout most of the region. In many countries of the Americas, judicial systems have inadequate resources and are unable to cope with rising caseloads, lack independence and are subject to political manipulation, are inconsistent and internally corrupt, and remain largely inaccessible to wide sectors of the population. These shortcomings have allowed for political leadership to function without effective checks and balances on power, in addition to fostering rising crime levels, perpetuating social marginalization, deepening public disillusionment with democratic institutions, and undermining economic development.

In response to these concerns, judicial reform initiatives have been carried out with a number of key objectives. These include the development of judicial independence and accountability mechanisms, improving court administration and efficiency, widening access to justice, and expanding legal education programs. Despite some promising results, many initiatives have fallen well short of their objectives and public confidence in the rule of law continues to fall. Reform efforts have often been plagued by a lack of coherent and interrelated strategies for reform, questionable political will, and inadequate consultation with domestic actors across various social sectors.

This paper's discussion of judicial reform in the Americas includes a brief description of the main challenges facing judicial systems and some key reform efforts undertaken to date. The paper offers general conclusions from recent initiatives. The importance of sharing experiences on reform projects, as well as developing integrated reform strategies for the long-term through cooperation between political, judicial, and civil society representatives is stressed.

RÉSUMÉ

La santé des systèmes judiciaires est devenue un sujet qui fait naître de plus en plus de questions et d'inquiétude dans les Amériques. L'importance des systèmes judiciaires pour la promotion de la gouvernance démocratique, la réglementation des économies de marché et pour assurer la sécurité sociale a été largement reconnue au cours des dernières années. Pourtant, dans presque toute la région, la performance de ces systèmes a été des des plus faibles. Dans de nombreux pays des Amériques, les

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systèmes judiciaires disposent de ressources inadéquates et sont incapables de faire face à une charge croissante de travail; ils manquent d'indépendance et sont soumis à des manipulations politiques; de plus, ils sont incohérents et corrompus. Ils demeurent également souvent inaccessibles à de larges pans de la population. Ces lacunes ont permis au pouvoir politique de fonctionner sans qu'il y ait de mécanismes de contrôle efficaces à son égard, en plus d'encourager une hausse de la criminalité, de perpétuer la marginalisation sociale, d'accentuer la déception du public envers les institutions démocratiques et d'entraver le développement économique.

Face à ces inquiétudes, des mesures visant à réformer l'appareil judiciaire ont été prises dans le but d'atteindre plusieurs objectifs clés. Il s'agit notamment d'élaborer des mécanismes pour assurer l'imputabilité et l'indépendance du système judiciaire, améliorer l'administration et l'efficacité des tribunaux, faciliter l'accès à la justice et élargir les programmes d'enseignement du droit. Malgré quelques résultats prometteurs, de nombreuses initiatives n'ont pas réussi à atteindre leurs objectifs et la confiance du public en la primauté du droit continue de s'émousser. Les efforts de réforme ont souvent été entravés par l'absence de stratégies de réforme cohérentes et complémentaires, par une volonté politique douteuse et une consultation inadéquate avec les intervenants des divers secteurs sociaux à l'échelle nationale.

Ce document aborde la question de la réforme judiciaire dans les Amériques et donne une brève description des principaux défis auxquels se heurtent les systèmes judiciaires et les principaux efforts de réforme entrepris à ce jour. Il offre des conclusions générales, suite à des initiatives récentes et met l'accent sur l'importance de partager les expériences sur les projets de réforme ainsi que de développer des stratégies de réforme intégrées à long terme en favorisant la coopération entre les acteurs politiques, les représentants du système judiciaire et la société civile.

RESUMEN

El estado de los sistemas judiciales es objeto de cada vez mayor atención e inquietud en las Américas. Junto al amplio reconocimiento que ha tenido la importancia de los sistemas judiciales en la promoción de la gobernabilidad democrática, la regulación de las economías de mercado y en la salvaguarda de la seguridad social en los últimos años también se reconoce que la actuación de los sistemas judiciales en la mayor parte de la región ha sido pobre. En muchos de los países americanos los sistemas judiciales cuentan con escasos recursos y son incapaces de afrontar una creciente carga de trabajo, carecen de autonomía y son objeto de la manipulación política, son incoherentes y corruptos, e inaccesibles para amplios sectores de la población. Estas deficiencias han propiciado que los dirigentes políticos ejerzan su poder sin un mecanismo de freno y control eficaz. Estos problemas también han propiciado el alza de la criminalidad, fomentado la marginalización social, profundizado el desencanto social con las instituciones democráticas, y socavado el desarrollo económico.

Como respuesta a estos problemas se han llevado a cabo una serie de iniciativas de reformas judiciales que persiguen objetivos primordiales. Entre ellos se encuentran establecer la autonomía judicial y crear mecanismos de rendición de cuentas, impulsar la gestión y eficiencia de las cortes, ampliar las vías de acceso a la justicia, y aumentar los programas educacionales en materia legal. A pesar de que se han alcanzado algunos resultados promisorios, muchas de estas iniciativas han quedado muy lejos de alcanzar sus objetivos por lo que la confianza pública continua deteriorándose. En muchas ocasiones las iniciativas de reformas han estado plagadas de estrategias incoherentes, y voluntad política dudosa. Además, los procesos de consultas con los actores locales de diversos sectores sociales han sido inadecuados.

El presente trabajo brinda una breve descripción de los principales desafíos que enfrentan los sistemas judiciales en las Américas, así como algunos de los esfuerzos más puntuales que se han realizado hasta la fecha, y conclusiones generales a partir de iniciativas recientes. Por último, se hace especial hincapié en la importancia de intercambiar experiencias entre los distintos proyectos de reformas y en el desarrollo de estrategias coordinadas para el largo plazo mediante la cooperación entre los representantes políticos, judiciales y de la sociedad civil.

JUDICIAL REFORM: A KEY ISSUE FOR THE AMERICAS

Judicial reform has entered the regional spotlight as a result of its importance for three key political, economic and social developments in the Americas over the past two decades: the transition to democratic governance from authoritarian rule, the liberalization of economic systems, and a recent rise in crime and civil violence.

Democratic transitions throughout the region brought relatively free and fair elections to most countries by the 1990s. The focus for political reformers has now shifted to a number of 'second generation' initiatives aimed at improving the functioning of democratic norms and processes on a daily basis. An integral part of democracy in practice is an effective and accessible judicial system to protect the basic civil rights of citizens, and to hold political, economic and military leaders accountable to laws that reflect societal rules and norms.

The region has also undergone a widespread transition towards economic liberalization. Initial reforms focused on reducing state involvement in economic processes and promoting private enterprise, but by the 1990s the focus turned to second generation institutional reforms required to support and regulate market activities. Governments and business leaders alike agree that a modern and reliable judicial system is critical to the regulation of transactions and the resolution of commercial disputes, as well as to encourage investment. Finally, a recent explosion in crime has increasingly put legal systems throughout the region to the test. With violence and lawlessness spiraling out of control in some countries, judicial systems are viewed as a key element of the solution, as well as part of the problem.

Together, these developments have meant an increased workload for judicial systems, as well as rising domestic and international pressure to perform. While the importance of judicial systems is unanimous, a general conclusion from analysts

and citizens of the region alike is that the functioning of justice in the Americas is plagued by a number of serious problems.

CURRENT CONCERNS

While the rule of law clearly varies from country to country, several general concerns regarding judicial systems in the region can be identified. They include:

- A general lack of funding, material resources and personnel for courts and other judicial institutions, along with inadequate training programs for judges, magistrates and court administrators.
- Overly formal and bureaucratic court procedures, as well as outdated laws and codes that are often unreflective of social realities. This has led to serious delays and case backlogs in courts, and an overcrowding of prisons with the accused waiting long periods for trial or sentencing.
- A lack of judicial independence, including frequent intervention by political leaders and courts that are often stacked with the executive's political or philosophical allies. Intimidation of judges is also commonplace, and judges are often unwilling or unable to bring individuals linked to organized crime or the military to justice.
- Inadequate mechanisms within judicial systems for training, internal evaluation, supervision and discipline, often leading to poor performance and corruption among judges and court personnel.
- Courts remain inaccessible for impoverished and rural populations due to financial costs, the shortage of legal services and assistance programs in poor and rural areas, and a lack of understanding of legal procedures. Discrimination within the legal system against indigenous people, women and children also continues to be widespread.

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RESULTS OF SHORTCOMINGS:

The shortcomings of judicial systems in the Americas have led to a number of serious developments that threaten democracy, social stability and economic development in many countries of the region. They include:

Democracy without accountability: The lack of a strong and independent justice system has meant that political rule is often exercised without effective checks and balances on power, and without consideration for existing laws. In many countries, executive leaders have manipulated judicial institutions into political tools to consolidate their own power and limit the effectiveness of opposition voices.

Increasing crime and violence: In the absence of effective criminal judicial systems, crime rates throughout the Americas have soared over the past decade. In many countries, the political violence of the past has been replaced by common crime, gang activity and illegal drug trafficking. Surveys have shown that public insecurity has become the primary concern of citizens throughout much of the region.

Declining confidence in democratic institutions: As a result of their inability to promote public security or combat corruption, judicial institutions have become the target of massive dissatisfaction and mistrust, with approval ratings often falling below 10 percent in public surveys. For poor, indigenous and rural populations, the justice system is often viewed as a barrier to improved well-being and a tool of oppression in the hands of the political and economic elite.

Rise of vigilante justice: To compensate for justice systems that are deemed too slow and too corrupt, citizens have resorted to taking justice into their own hands. A deeply troubling trend in a number of countries has been the emergence of organized vigilante groups, as well as increasing incidents of mob justice, including the lynching of suspected criminals. Many have also supported the use of the armed forces for internal security purposes and more aggressive policing measures, often resulting

in serious violations of basic civil rights and liberties.

Support for populist and authoritarian-style politicians: With public trust in democratic institutions on shaky ground in a number of countries, many voters have turned to ‘outsider’ political candidates promising strong-armed rule and an overhaul of existing political processes. Some countries have seen the emergence of leaders who justify power centralization and assaults on existing institutions as their right and duty upon election. Analysts fear this type of leadership will weaken mechanisms to ensure lawful and accountable leadership over the long run.

Rising concern among investors: The lack of stable and effective judicial systems has also been faulted for contributing to financial instability and causing fear among investors. Uncertainty over legal rules and their application, in addition to social instability, has served to discourage long-term capital investment needed for economic development.

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THE NEED FOR REFORM

Few issues in the Americas unite groups across social sectors as much as the importance of reforming judicial systems. Human rights groups and other NGOs have insisted on the necessity of the rule of law to ensure basic civil rights, resolve civil disputes, and address other social concerns including labour laws and environmental regulations. For their part, business leaders demand a justice system that is modern, reliable, and that protects property rights and contracts. The growing urgency and apparent consensus on the need for judicial reform has led to a wide range of key reform initiatives undertaken throughout the region.

KEY REFORM INITIATIVES

In one of the most noteworthy recent contributions to the study of judicial reform, William C. Prillaman develops a framework for reform based on issues relating to judicial independence, accountability, efficiency and access. *Independence* relates to a

freedom from political (or other external) control for judicial institutions and individual judges. Accountability involves mechanisms to fight corruption and ensure performance standards within the judiciary itself. *Efficiency* refers to the functioning of legal procedures in a timely manner that reduces case backlogs, as well as the allocation of adequate skilled personnel for judicial institutions. *Access* means ensuring justice is equally available for marginalized citizens, including the poor, indigenous or minority groups, rural populations, women and children. This framework provides a useful lens for discussing and assessing judicial reform efforts.

Judicial Independence and Accountability

One of the most pressing reforms has been to develop greater autonomy for judges and the judicial system as a whole. Still, a fine balance must be found between isolating judges from political influences while also ensuring mechanisms for accountability and discipline within the judiciary itself.

To increase institutional independence for the judicial system, a number of measures have been promoted. A first is budgetary autonomy for the judiciary, this usually includes securing a minimum percentage of the state budget and granting administration powers to the judicial system. Judges should also have secure terms; most analysts agree that terms should approach ten years at least, although the issue of life terms remains contentious. Judges’ salaries should be competitive to decrease the need or temptation to accept bribes, and they should be guaranteed to avoid any manipulation by the legislature or executive. Further, judicial appointment processes should be transparent and encourage political compromise and consensus.

The creation of judicial councils has been a popular initiative in the region. Such councils are normally made up of representatives from bar associations and legal advocacy groups, law professors, judges from various levels of the judiciary, members of the legislature and representatives of the executive. Their mandate usually includes nominating and promoting judges, as well as developing standards

of conduct to monitor performance. In some cases, judicial councils also have the power to discipline members of the judiciary. Such councils have been established with relatively good results in a number of countries in the region, particularly where they have ensured the inclusion of representatives from a wide range of social and political perspectives.

Examples of initiatives in these areas include Mexico’s 1994 constitutional reforms that established a judicial council to assume responsibility for appointments to lower courts, the administration of the judicial budget, and evaluation and disciplinary mechanisms for judges. The reforms also decreased the executive’s role in court appointments, as well as granting the

Supreme Court new judicial review powers to rule on the constitutionality of new legislation. Most observers believe the court has now taken on an increasingly active and independent role in promoting the rule of law in the country. El Salvador’s peace process also brought reforms to judicial appointment processes, particularly to the new Supreme Court where candidates are now nominated by a

judicial council and through an open vote among lawyers in the country. Appointments are secured by a two-thirds majority in the legislature, ensuring a process of political compromise and now undoubtedly giving the country its most representative Supreme Court ever. New powers for the Attorney General to investigate wrongdoing in other state agencies were also granted, thereby ensuring an additional measure of accountability within governing institutions.

Improving Judicial Administration and Effectiveness

With court delays and case backlogs clogging up judicial systems across the region, strategies to handle the rising caseloads are critical. A first measure is simply to increase court personnel. In some countries, judges reportedly spend up to 70% of their time on administrative tasks alone, obviously compromising their juridical duties. More judges are clearly needed in most countries, while some analysts have prioritized permanent administrative positions. Additional courthouses are also a general necessity, while court facilities

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and technologies must be modernized to allow for improved case filing and reference systems.

One measure that has gained in popularity in the region has been the implementation of oral procedures, particularly in the criminal justice system. This is in response to the formalities and bureaucratic paperwork that often grind justice to a halt. In addition to generally being faster and simpler, oral proceedings may also ensure a measure of transparency as judicial decisions are revealed publicly and evidence is scrutinized. A number of countries have introduced oral proceedings into their procedural codes in recent years, and the importance of oral proceedings was recognized in the Action Plan of the 1998 Summit of the Americas in Santiago, Chile. At the same time, enthusiasm for oral proceedings is not unanimous, as the transition to the new system has often resulted in additional delays in the short term. For it to be successful, the incorporation of oral systems must be accompanied by adequate training and public education campaigns.

Access to Justice and Alternative Dispute Resolution Mechanisms

In order to take the burden off overwhelmed formal court systems, the use of alternative dispute resolution mechanisms (ADR) has become a key aspect of judicial reform in a number of countries. ADR has also been promoted as a means to increase public confidence in the justice system by offering citizens access to local conflict resolution according to community norms and values, and at a much lower cost than through traditional litigation. ADR mechanisms may include conciliation or mediation with the assistance of a third party, as well as arbitration for private sector commercial disputes.

Perhaps the most popular ADR option is the use of justices of the peace. As members of the communities in which they work, justices of the peace are generally closer to the issues being discussed and their cultural significance, and are normally viewed as trustworthy individuals by community members. They have a moral obligation to seek a negotiated settlement between the two sides, and usually only have jurisdiction should

such conciliation efforts fail. This process allows for a more open and informal interaction between the disputing parties. A recent study of a justice of the peace project in Peru found that 63% of litigants expressed satisfaction with the system, an exceptionally high number considering the lack of confidence in that country's formal courts.

While most experts have stressed the utility of ADR mechanisms, and particularly justices of the peace, there are a few warnings. Perhaps most importantly, ADR mechanisms must be accepted and supported by the formal justice system itself. Courts must respect the authority of ADR mechanisms and their decisions, and should support the administrative and logistical needs of ADR programs. Some observers feel that ADR mechanisms should be merely an option for citizens, and access to formal courts must be secured if preferable. In this sense, analysts have warned against the creation of 'two-tiered' justice systems with different mechanisms for the rich and the poor. Further, justices of the peace should be appointed through a transparent process to avoid corruption and abuse of power, and they should be provided with adequate training.

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Access to Justice and Legal Assistance Programs

To compensate for high legal costs and the difficulties of impoverished populations in accessing judicial systems, legal assistance programs have been another priority for reformers. While public defender offices exist in most countries, they are generally under-funded and understaffed, leading to exceedingly long waiting lists and delays. Public education programs are another critical element of access to justice, as citizens must be made aware of their rights and understand the basic functioning of the judicial system. Attracting lawyers to public practice is another concern, as law schools rarely include legal assistance programs and services in their curriculum.

One successful program in Chile has been the use of mobile legal assistance teams in impoverished areas to provide advice and answer questions on judicial procedures. Such programs may serve to

demystify the legal system and grant it new legitimacy. Other interesting initiatives can be found in Trinidad and Tobago, where all law students must handle at least one legal assistance case during their training, and again in Chile, where law school graduates must complete a six-month internship in a clinical legal education program before being admitted to practice.

Legal Training

Legal education and training for judges and lawyers is another essential aspect of judicial reform. Most analysts believe that expanded training programs should start in law school, including greater practical training and courses on specific aspects of the legal system, particularly civil rights. Expanded training programs for current and newly appointed judges are equally important, and should also include techniques for better case management.

International donors have generally made legal training a key element of their programming, particularly initiatives to train judges and lawyers on new codes and procedures. Many early efforts prioritized training in commercial law to favour international investment and economic development, but a number of donors are increasingly turning to training on civil rights issues. Beyond international training programs, key training programs have also been developed through domestic judicial councils and bar associations.

LESSONS LEARNED FROM REFORM INITIATIVES

It is clear that a number of reform initiatives have been successful in improving specific aspects of the rule of law, and generally resources allocated for judicial reform programs are on the rise throughout the region. Despite these gains, however, judicial systems across the region remain in crisis and public confidence in the rule of law continues to plummet. A number of general lessons learned from efforts to date may be suggested.

The Key to Reform: A Comprehensive Approach

The principal conclusion from William C. Prillaman's 2000 study on judicial reform is that the

key shortcoming of reforms to date is their failure to address judicial reform as an integrated set of issues (i.e. related to independence, accountability, efficiency and access) that influence one another. Instead, the focus has often been on individual initiatives treated in isolation from the rest of the system. Evidence suggests that reforms to one aspect of the judicial system alone will not necessarily lead to improved functioning of the system as a whole. In some cases, initiatives carried out in isolation may lead to overall imbalances in the judicial system with unintended negative consequences.

A number of striking examples illustrate these concerns. Under its 1988 Constitution, Brazil implemented new measures to grant citizens access to the courts, but the issue of efficiency was largely neglected. As a result, the court system has been

inundated with new caseloads that it cannot handle, and by 1996 the Supreme Court alone had a backlog of over 60,000 cases. Brazil also made efforts to ensure judicial independence from political forces, yet few mechanisms are in place to ensure the accountability of judges and corruption within the judiciary itself is now felt to be rampant. As

a result, the population has generally lost faith in a judicial system that is deemed too slow and highly corrupted.

In Argentina, the judicial system experienced relatively successful reforms in the 1990s relating to access and efficiency, including expanded legal assistance programs, new technologies and the use of oral argumentation, but witnessed significant steps back in terms of judicial independence. The executive used his power to pack courts and purge the judiciary of opponents, and political interference in the judicial system was evident on a daily basis. Despite improvements in some areas, the general perception of justice in the country became one of heavy corruption and political control, and public confidence in the courts dropped dramatically.

Beyond Market-related Reforms

Recent experiences have also shown that policy makers should not prioritize efforts to reform economic investment and commercial procedures

over initiatives to improve judicial access for underprivileged citizens. Otherwise, the fruits of reform are likely to be enjoyed by a small sector of society, while resentment towards the judicial system will grow among the general public.

In Venezuela, the World Bank financed a major project to modernize the country's judicial infrastructure in the mid 1990s, with a priority given to greater efficiency and a stable regulatory environment for economic investment. However, studies of the project have criticized it for its relative neglect of accessibility for low-income populations, as well as its failure to promote judicial independence from political control. Indeed, by the late 1990s, Venezuela's judicial system had an approval rating of less than 10 percent according to public surveys. In Peru, the United States Agency for

International Development (USAID) provided significant advice and assistance to reform the legal system in the country in the early 1990s, but efforts were aimed primarily at improving the business climate in the country. In the end, the reforms offered few benefits to the general population and did little to change the massive corruption and abuse of power that plagued Peru throughout the 1990s.

International Actors: The Need for Coherence and Integration with Local Actors

One of the most serious criticisms of judicial reform initiatives undertaken by international agencies is that they have often been designed and implemented without the participation of local actors. International agencies must ensure that domestic leaders participate in the development of reform initiatives to ensure their compatibility with local norms and their sustainability over the long run. Another problem is that international donors have often neglected to work together and share information and experiences relating to legal reform initiatives. As a result, the potential for mutually-reinforcing programming has been undermined.

A number of observers have suggested that some international efforts to reform justice in Haiti have

been plagued by such problems. Although USAID was very active in promoting programs to train judges and prosecutors, as well as providing new technologies and materials to Haitian courts, many analysts felt that the long-term success of its initiatives were undermined by a failure to include local actors in the prioritization, design and implementation of its projects. Others have noted the lack of communication between USAID's programming and that of the United Nations Civilian Mission (MICIVIH) as a serious obstacle to the development of a coherent long-term vision for judicial reform in that country.

Judicial Reform as a Political Issue

Another key criticism of judicial reform programming is its frequent failure to recognize the inherent political nature of its objectives. Judicial

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reform initiatives have often been undertaken without addressing the issue of political will for reform, which is critical and often lacking. It has become clear in a number of cases that political actors oppose reforming judicial systems that have traditionally been allies of those in power. At the same time, the judiciary itself may be the target of concern. A common problem has been to grant too much responsibility to the judiciary to reform itself, when internal reforms such as the purging of corrupt judges are likely to be opposed. In

this case, political leaders are often needed to apply pressures on the judicial system. Without a consensus between the judiciary and political leaders on the importance of reform, a comprehensive reform of the judicial system is likely to fail.

In Chile, the recent judicial proceedings against former general Augusto Pinochet would have been impossible to imagine before recent reforms to the political system and the military. While the case remained extremely delicate for Chilean leaders, the new political environment allowed for the judicial system to represent a mechanism for accountability. The Chilean example is in stark contrast to Guatemala, where a lack of political will has undermined efforts to enhance judicial independence as outlined in the recent peace

agreements. Judges are still subject to widespread control and intimidation from political forces and the military, and observers fear the political climate will continue to impede meaningful change to the judicial system in the coming years.

The Role of Civil Society Organizations

Judicial reform efforts have clearly shown the importance of civil society organizations as agents for meaningful change. In particular, civil society organizations in many countries have played a critical role in offering legal education and counseling for low-income and rural populations. Given the shortcomings of state programs in many countries, NGOs represent a key force for promoting access to justice, and offer an important partner for international actors pushing for reform. Many analysts also favour a greater role for civil society organizations in terms of formal legal representation, claiming that more powers should be granted to such groups to initiate legal suits on behalf of underprivileged citizens or collective interests.

Civil society organizations also have a critical role in applying pressure on political leaders and the judiciary itself to reform, including the work of media organizations and NGOs promoting legal accountability. Further, civil society organizations may offer critical perspectives on the needs of judicial systems and strategies to promote programs of meaningful change. Analysts have stressed the importance of consultation with civil society groups in determining the needs of justice systems from the perspective of those using the system on a daily basis.

Linking Judicial Reform to Related Issues

A final point is the need for judicial reform efforts to be supported by reforms to other related areas. Perhaps most clearly related to judicial reform is the issue of law enforcement. Obviously, unless police forces are properly trained and adequately equipped, reforms to the judiciary alone will bring little improvement to public security. Also related is the issue of penitentiary reform, including strategies to reduce prison overcrowding. Representatives of these sectors should be partners in the

development and execution of long-term strategies for judicial reform in the region.

THE INTERNATIONAL COMMUNITY AND JUDICIAL REFORM

Judicial reform has become a key priority for international agencies active in the Americas. The Inter-American Development Bank (IDB) has focused its activities on professional training for judges and magistrates, management strategies for courts, and conciliation and arbitration mechanisms to resolve investment and commercial disputes. The IDB has rapidly expanded its initiatives in these areas since the early 1990s, and now has programs in most countries of the region. The World Bank has been active in the region since the 1980s with a focus on technical assistance and judicial training. More recently, the World Bank has prioritized a wider range of reforms including legal assistance

programs, alternative dispute resolution mechanisms, legal infrastructure and reforms to legal procedures.

Judicial reform has also taken an important place within multilateral political institutions and initiatives, including the Organization of American States (OAS) and the Summit of the Americas process. The ministers of justice of the hemisphere began meeting yearly in

1997 with the support of the OAS to discuss the various needs of judicial systems and opportunities for regional cooperation. The Plan of Action from the 1998 Summit of the Americas in Santiago, Chile stressed the importance of strengthening justice systems and judiciaries, and called for the creation of a Justice Studies Center of the Americas based in Santiago. The main activities of the Center include training justice sector personnel and facilitating the exchange of information and technical cooperation in the region.

At the 2001 Summit in Quebec City, the Plan of Action further stressed the importance of judicial reform and the rule of law. Of note were initiatives relating to judicial access, including legal education initiatives and the use of ADR; a focus on transparent judicial appointment processes and performance standards; and the call for the OAS to

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create a network of information exchange on legal systems and opportunities for mutual assistance. The Plan of Action also stressed transnational crime and the importance of increased cooperation between the judicial systems of the region to fight drug trafficking and cyber crime.

CANADA AND JUDICIAL REFORM IN THE AMERICAS

Canada has also placed a new emphasis on judicial reform in its international assistance programming. Disbursements from the Canadian International Development Agency (CIDA) for legal and judicial reform initiatives in the Americas region rose dramatically from \$335,000 in 1990/91 to nearly \$17 million in 1996/97, and the Americas region received almost half of CIDA's total disbursements in this area. The most common projects in the 1990s involved skills and technology transfer and training. Support was also given to Departments of Justice and court systems, law making bodies to modernize legislation, legal aid initiatives undertaken by professional legal associations and other NGOs, and legal awareness and education programs.

In recent years, CIDA has funded several major initiatives in Haiti, including courthouse building and renovation, the training of magistrates and legal experts, research on the country's legal system, legal assistance programs, and police training. Other projects have included the creation of a legal studies centre in El Salvador, the establishment of a local justice centre in an ex-conflict zone in Guatemala, support to the Ombudsman of Peru, and a human rights education and legal assistance project in Colombia.

Ongoing projects of note include:

- \$7 million for a social conflict and legal reform project in Jamaica aimed at establishing alternative dispute resolution mechanisms, improving court administration and record-keeping, expanding access to legal information, and raising awareness for the rights of children and youth.

- \$4.5 million for a legal and judicial reform project in the Eastern Caribbean region aiming to improve the efficiency of court systems, improving legal information systems and reforming prevention, sentencing and rehabilitation programs.
- \$11.9 million fund for the development of democracy in Guatemala, including programs to raise awareness for basic human rights and the establishment of alternative dispute resolution mechanisms.

RECOMMENDATIONS FOR FUTURE REFORMS:

As judicial reform becomes an increasingly important priority for domestic and international policy makers alike, future programming in this area should consider the general conclusions of

initiatives to date. General recommendations include:

- Analyses of some of the more promising initiatives in the region to date, including alternative dispute resolution mechanisms, judicial councils and oral proceedings, should be compiled and experiences shared among domestic and international policy makers. Countries of the Americas might consider strengthening the mandate of the OAS's Secretariat for Legal Affairs, particularly the Department of Legal Cooperation and Information, in this regard. Along with a strengthened mandate, countries should also provide adequate resources to carry out the job.
- Judicial reform initiatives must be designed and executed through extensive consultation with and among domestic political leaders, judges and lawyers, civil society representatives, and related institutions including law enforcement. The implementation of reform efforts must not be left in the hands of the judiciary alone, and should include the participation of representatives from various political and social groups.
- International agencies must work closely together to develop coherent and mutually-reinforcing projects focused on the long-term. In the Americas, this must include initiatives of the

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OAS, IDB, World Bank, bilateral donors, and the Summit of the Americas process. International support for judicial reform projects could also be linked to financial support in other areas to breed domestic political will for reform. The World Bank might be asked to establish a supporting Coordination Secretariat for Judicial Reform Initiatives. Such a Secretariat need not be overly large or bureaucratic, but would provide a central focal point for this issue.

- The need to develop comprehensive, long-term judicial reform strategies including each principle aspect of the judicial system (i.e. independence, accountability, efficiency and access) is critical. Initiatives that address aspects of the rule of law in isolation are likely to have limited success, and may breed imbalances in the functioning of the judicial system.

- Resources for judicial access programs aimed at underprivileged citizens, as well as support for community organizations and advocacy groups working at the grassroots level are essential to generating public legitimacy for judicial systems. Such initiatives will also serve to improve basic democratic norms and practices over the long run. In many countries, Bar Associations or other professional bodies have done some useful work in this area. The ideas and views of legal practitioners should not be ignored. While such associations tend to be organized on a sub-federal level in many jurisdictions, various national Departments of Justice could play a useful role in bringing a range of representatives together to forge concrete action plans.

CONCLUSION

Given the recent liberalization of political and economic systems throughout the Americas, judicial systems have gained new importance as the frameworks through which social, political and economic relations between citizens must be regulated. It is clear, however, that the region's legal

systems have yet to meet the demands of the populations they are supposed to serve. Judicial systems remain among the least trusted state institutions, and growing disillusionment with the rule of law may undermine democratic development in the region.

The good news is that the new focus on judicial reform, particularly efforts to create independent and accessible judicial systems, are a significant change for institutions that have traditionally been no more than political weapons for the ruling elite. Reform programs have been undertaken across the region and new resources granted to related initiatives, with some notable results. Still, an analysis of recent reform efforts warns of the

difficulty of the task at hand. One of the most important lessons of initiatives to date is that there is no 'quick fix' for judicial systems or any 'magic bullet' reform that should be the primary focus of efforts. Instead, judicial reform must be approached as a long-term process including a variety of interrelated aspects of the rule of law, each of

which is critical to the proper functioning of the judicial system. In many ways, the overall functioning of a judicial system, as well as its public credibility, is likely to be a reflection of its weakest link.

Optimists hope that judicial systems may eventually become the vehicle through which social causes are fought, and mechanisms through which the underprivileged hold the powerful accountable for their actions. This transformation is likely to be slow given the complex nature of judicial reform and the resistance to change by some entrenched powers. Only through persistent efforts and coherent long-term approaches to reform, including a leading role for civil society actors, will judicial systems eventually offer the possibility to counter long-standing injustices and inequalities in the region.

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