

# Consolidation of Judicial Reform in Latin America: Fantasy or Reality?

Presentation by Diana Villiers Negroponte,  
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## Context for study: globalization of criminal activity – penetration of the hemisphere by drug cartels, criminal networks and the *mara* .

### Consequence:

- Homicide rates (per 100,000):

In El Salvador - 37 in '03, 45 in '04, 56 in '05, 72 in '07

Guatemala - 32 in '03, 47 in '06, 59 in '07

U.S. on average 5.6

70% of deaths occurred with a deadly weapon, 800,000 firearms possessed illegally and 0.5 million legally held.

Source: *UN Office of Drug and Crime Statistics*

- Level of Fear: Chile – 2000 15% expressed high levels of fear rising to 19.5% in '07

- Victim to robbery or intent to rob

Source: *Adimark: GfK* private polling

Negative impact on quality of life, investment, protection of property and legitimacy of the state

# Alternative means to contain criminal activity

- Traditional response post crime:
- *mano dura* - use of military forces, pre-trial lengthy imprisonment
- Alternatives:
- Engage prior to crime with societal prevention programs
- Intervene with rehabilitation programs + societal prevention
- Commit to institutional reforms of the judiciary
- police reform, and
- Prison reform
  
- Recommend integrate societal prevention, intervention and
- institutional reforms.

# Traditional inquisitorial system characterized by:

- Written arguments at all stages of the process
  - Concentration of investigative and decision making procedures in the examining magistrate
  - Secretiveness
  - Absence of any means, throughout the criminal process, to assure that the person charged is not guilty
  - Automatic conversion into proof of all information gathered in the course of the indictment
  - Minimal capacity to challenge probity of evidence, and
  - Practice of provisional imprisonment during the investigative stages as a means to ensure that the criminal process achieves results.
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- Underlying purpose is the identification of a culprit to satisfy the needs of the victim and the state. It is less important that the person charged be the guilty party.
  - Source: *Instancia Coordinadora para la modernizacion del Sector Justicia*, IADB, Sept '06

# Fundamental challenges

- historical role of the judiciary
  - systemic or structural forms of corruption
  - judicial inefficiency
  - political corruption, and
  - criminal association with the cartels.
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1. Cumulatively, the traditional process has undermined the legitimacy of judicial system
  2. Judicial reforms not accompanied by cultural change among jurists and the public, and
  3. National budgets remain inadequate.

# Resulting public opinion of the Judiciary

- lack of independence, impartiality, transparency, public accountability.
- minimum access to justice, minimum likelihood of fair hearing, minimum protection of witnesses, and
- discrimination against women, youth and indigenous people.
  
- **Sources:** Latinobarometro, World Bank's Governance Indicator's, Freedom House, Transparency International, Due Process of Law Foundation, World Economic Forum's Competitiveness Report, Index for Management & Development, Political & Economic Risk consultancy

See DATAGOB:

<http://www.iadb.org/datagob>

# Constitutional Reforms

- Constitutional reforms regarding the penal code introduced in 1990s and influenced by Alberto Binder and Julio Maier.
- Entered into force in Colombia and Argentina (1992) Guatemala (1994) Costa Rica and El Salvador (1998) Venezuela (1999) Chile (2000) and Peru (2004) Mexico (2008).

# Constitutional Changes to the Traditional Judiciary in LATAM

- Inquisitorial to accusatorial system – oral argument
- Principle of innocent until proven guilty
- Opportunity to challenge the prosecutor in open court
- Public trials and public access to state charges and grounds for final decision
- Timeliness
- Limitation on pre-trial detention
- Balancing the rights of the victim and the accused
- Impartial judge with capacity to enter into a direct relationship to prosecutor and attorney for the defense, and
- Alternative remedies.

# Current Problems faced

- Traditional acquiescence to Presidential and judicial authority
- Culture of judicial exclusiveness and avoidance of public scrutiny
- Reduced protection of victim and the state
- Role of attorney general, prosecutor and police remain vague, sometimes undefined
- Inadequate budget
- Inadequately trained lawyers
- Role of the bar, or judicial council
- Concentration of judiciary in cities

# Indicators to determine success in reforming judiciary

- Size of the budget for the judiciary
- Existence and independence of a judicial career
- Qualifications for admission to the judiciary
- Public trials, translation and interpretation
- Case load
- Internal or external audit, process for complaints
- Independence of bureaucracy
- Timeliness – how long
- Geographical coverage within the nation
- Source: *Indicadores judiciales para las Americas, Centro de Estudios de la Justicia de las Americas (CEJA)*

# Conclusion

- Prolonged process of adaptation
- Creation of trust in the judiciary is related to trust in the political process
- Civil society commitment to monitor and help overcome considerable obstacles
- To date, less than desirable impact on levels of criminality
- Indispensable engagement with other elements to protect citizen security
- U.S. role: enhance its support for civil society working on rule of law and citizen security.