



SPECIAL REPORT

# Justice in Latin America as an essential factor for development

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ideas

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## I. INTRODUCTION

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The analysis of justice in Latin America requires considering three fundamental aspects that have an overall effect, although to a different degree, on the entire region. These aspects include the existing institutional blockage of justice, the efforts towards reform that have taken place by all Latin American nations in their respective justice systems, the limited results of these reforms and the lessons learned in order to undertake new reform initiatives.

In the last 30 years, significant budget allocations have been set aside for justice reforms, which have taken place in nearly all Latin American countries. This shows a significant change in awareness regarding the importance of justice, an area that has been traditionally marginalised in the region. However, despite these efforts, the results have fallen short.

The analysis of these matters originates from the importance of justice as a "tool" for development, both in a general manner as well as in a purely economic perspective. In the last instance, the justice system's correct operation is an essential pillar for any democratic system as well as for the economy of a democracy. To do so, the state must have the authority to ensure that the legal system is the only criteria for regulating social relations, in general.

The existence of an independent, reliable and efficient judicial system provides the best setting possible for investments and growth. However, these characteristics must be accessible to all citizens. The aim is to establish a justice system that does more than simply favour economic growth and development. Justice cannot be created only for businesses; it must exist for all citizens. In fact, investments and growth cannot be assured if the rules and the justice system do not guarantee the protection of the basic rights for all citizens. This is the only way for the judicial system to be legitimate and therefore have enough credibility so that laws are followed and so it can exercise its role as a comptroller of other state bodies, therefore guaranteeing the best return possible for economic growth and development.

In the past, the link between justice and the economy has never been quite as clear as it is nowadays. There is currently a general consensus between economists and jurists regarding this link, to such a degree that it is understood that a nation's economic and social development does not depend merely on its natural resources or its economic policies. Although economic growth can occur without a solid and efficient judicial system, as some authors have defended, the economy will not be able to reach its full potential and growth will not be solid. In other words, full development

**“It is useless to carry out a reform without an accurate diagnosis of the causes”**

is not possible without guaranteeing the development of institutional capabilities, modernising legislation, reforming the judicial system, protecting and defending basic citizen rights, fighting against corruption, reforming criminal justice systems, access to justice and the methods for controlling violence, and guaranteeing citizen safety and coexistence.

Increased awareness of this link is evident because for years international development organisations, including multilateral development banks, have considered governance and a stronger rule of law as areas of interest and for analysis. The role of agencies and of international cooperation has been important for the reform process in the region, and it has also been partly responsible for the limitations and the failures of these reforms. These agencies, along with Latin American governments, carried out a wave of reforms in the 1990s, and although progress was made, these efforts were limited and even failed. The general conclusion is that if there have been improvements, they are not in proportion to the efforts put forth.

However, the goal is not to place blame but rather to highlight the complexity of these reforms. The most obvious solutions are not always the best alternatives. Investing additional resources and hiring more judges are not necessarily the measures to fix justice issues. Having an

unlimited budget or doubling the number of professionals who work in the justice system are not necessarily solutions either. The issue is not always (or merely) a matter of quantity. Experience has shown that it is useless to carry out a reform without an accurate diagnosis of the causes that hinder the system's operation. In fact, this is one of the main reasons behind the failures or the limited results obtained from reforms.

This failure does not show that it is impossible to reform justice, but rather that reforms must have a better design. Hopefully the region will not give up on the effort to improve justice, especially because of the accumulated experience and knowledge that should be taken advantage of. Initiatives are present, along with awareness regarding the need to strengthen the state and its institutions. This is a fundamental starting point.

However, this has not always been the case, and the interest shown since the 1980s in the region's justice systems is unprecedented. Historically, judicial power has been a footnote in Latin American history. Unlike other regions, Latin America's political, economic, social and cultural histories have taken place independently from the operation of its judicial powers. However, regardless of their results, reforms have shown that unlike the past, it is understood that it is no longer possible

**“This overall well-being is what guarantees a solid and sustainable economic impact”**

to continue ignoring judicial power since it plays an essential role. Its decisions affect the stability and development of our economies, the ability to control political corruption, the defence of human rights, and levels of insecurity. In summary, judicial power is important in terms of basic aspects for the development of Latin America. This new perception can continue promoting the willingness to resolve the justice issues that currently exist.

## **2. LINK BETWEEN JUSTICE AND DEVELOPMENT**

It is not a matter of stating that economic development and growth depend on how justice operates, but rather that it is a fundamental element that supports and favours the amount and clarity of development, and additional factors must be involved in order for this to be possible.

In addition, development should not be understood in a narrow manner and based on restricted indicators that are merely closely tied to the market and to business opportunities. The concept of development must be interpreted with regard to the general population's well-being and quality of life. In fact, this overall well-being is what guarantees a solid and sustainable economic impact, to which justice makes an essential contribution. However, justice should not be interpreted in a narrow or

isolated manner. The potential for having justice operate better does not only depend on the judicial bodies and their institutional strength. Justice will improve visibly if other state structures are also solid.

Based on this extensive perception of justice and development, by considering cases such as Chile, Costa Rica and Uruguay it is possible to reveal the degree to which it is essential to consider institutional strength in general as well as the strength of justice as an element that is extremely important for guaranteed development. These three countries are prominently positioned compared to the rest of the region in terms of their civil liberties, democratic quality of life, institutions, and legal and judicial systems. It is not a coincidence that they also stand out in terms of economic growth and development indicators. In fact, these nations clearly receive the most praise in the region in terms of:

- Civil liberties, covering judicial independence and the rule of law.
- Perception of corruption – international transparency–.
- Governance –World Bank–.
- Democratic development – IDD–.
- Legal structure and secure property rights –Fraser Institute–.

**“This data confirms the democratic quality, institutional strength and operation of the judicial system”**

- Democracy, market and transparency –CADAL–.
- Institutional quality –CIIMA – ESEADE–.
- Uruguay, with regard to Police fees –CEJA–.
- Costa Rica and Chile, in terms of access to judicial information via the Internet –CEJA–.

Chile is superior in other measurements, such as:

- Protected property rights -Heritage Foundation and Wall Street Journal (Uruguay also stands out in this aspect).
- Competitiveness –World Economic Forum–(Uruguay and Costa Rica as well).
- Economic freedom –Fraser Institute– (accompanied by Costa Rica).
- Doing business –World Bank–.

In the judicial system measurements, Uruguay and Costa Rica stand out in terms of:

- Faith in justice – Latinobarómetro–.
- Judge and defence counsel fees –CEJA–.
- In terms of case resolution fees and budget allocation per capita to public prosecutor's offices, Chile and Costa Rica spend the most resources per capita on Advocacy –CEJA–.
- Costa Rica has the highest proportion of lawyers for every 100,000 residents – CEJA–.

This data confirms the democratic quality, institutional strength and operation of the judicial system, while making it possible to verify the improvement in the development indicators of the aforementioned nations:

- Growth in GDP, income, electrical consumption, energy usage and number of Internet users (World Bank).
- Lower child mortality rates, improved life expectancy at birth, increased direct foreign investment levels, and higher average annual growth for actual and per capita GDP (UNCTAD).
- Chile's progress in the measurement of human development (UNPD) was evident, as well as that of Costa Rica and Uruguay, due to lower economic inequality and the smaller gap between the population's 10% wealthiest and 10% poorest.

In summary, the data and its links show that as these three countries benefit from greater consistency and institutional predictability than the rest of the region, their potential for well-being and overall positive quality of life for residents in

**“The coincidence in the link between justice and development appears from all perspectives”**

a sustained manner is much higher, as proven by reality<sup>1</sup>.

Aside from the statistical data, the opinions of professionals who are (and are not) directly involved in justice agree in establishing the correlation between development and justice. Judicial system agents, professionals and political leaders all confirmed the importance of justice for development, and that improving the justice system's operation would affect development<sup>2</sup>. The evidence obtained gives shape and essence to the road towards development built by nations that, through work, consistency and following rules, helped bolster the trust of their societies and public sectors.

Most specialists agree, and many factors must be considered in order to understand the development of a specific reality. For this reason, there is a certain level of simplification in supposing, as Julio H. G. Olivera has done, that a country's economic growth rate depends on its degree of legality, and he believes that in a global economy, resources shift from countries with low legality to those with high legality<sup>3</sup>. This statement would require

empirical verification, and if this is done using specific cases, it will not always match reality. However, there is no doubt that the degree of legality is a very important factor.

However, the coincidence in the link between justice and development appears from all perspectives as well as from the judicial world. In this regard, Enrique Mendoza Ramírez, who was President of Peru's Judicial Power, believes that “it is not possible to measure a nation's level of development if the quality of justice services is not taken into consideration.”<sup>4</sup> There is no doubt that Latin American societies need stable and reliable judicial systems in order to make predictable progress towards development.

### 3. INSTITUTIONAL BLOCKAGE OF JUSTICE IN THE REGION

In order to analyse the main issues of justice, it is recommended to provide data that highlights the main issues that affect justice, even to a different degree, throughout the region.

#### SOCIAL PERCEPTION OF JUSTICE

A distinction must be made between the social image of

<sup>1</sup> The corresponding data is available in Luis M. Palma, 'Justicia y desarrollo en América Latina', (Justice and Development in Latin America) the Belgrano theses, University of Belgrano, 2013,

<sup>2</sup> Ibid., the author, interviewed a sample of professionals located in Argentina.

<sup>3</sup> Ibid.

<sup>4</sup> Peru & Lex: *Investments and Justice*, Lima, 2014.

**“Faith in the judicial system has remained stagnant at 37%”**

justice and the state of justice. The population's perception does not always match the institutional reality, but it is an important indicator since citizen views provide information regarding justice's level of legitimacy and credibility. The lack of prestige and faith on behalf of the population has become part of the definition of justice.

According to the Latinobarómetro, this assessment is among the worst, along with that of the police, compared to other institutions. This source states that since 2003, the population's faith in police has risen to match justice levels, while faith in the judicial system has remained stagnant at 37% since 2004<sup>5</sup>. In the eyes of citizens, justice is slow, expensive, corrupt, and associated with power. This means that according to this perception, justice is not independent, impartial or accessible to all.

This depiction basically coincides with the characterisation that describes populations with limited resources. Based on a survey carried out in poor, urban sectors of Chile, it was verified that their access to justice depended primarily on wealth and that they believed that discrimination and corruption acted against them<sup>6</sup>:

- Nearly two-thirds (63.5%) stated that judges behave differently with the wealthy and the poor.
- Only one-fourth of those surveyed (26.3%) perceived that judges did not accept bribes.
- Almost 90% believed that lawyers were too expensive.
- 17.4% believed that the top goal of lawyers was to earn money (as opposed to defend individuals) and that they would delay proceedings in order to charge more money.
- About 80% agreed that lawyers were corrupt.
- Approximately 90% believed that Chile had justice for the wealthy and a different justice for the poor.

This perception of justice by underprivileged sectors could be applied to most countries in the region. In fact, it could even be worse since Chile is one of the nations where institutions have one of the highest levels of faith and trust.

However, the fact that poor people believe that wealthy individuals have better justice does not mean that the wealthy are much more satisfied with the justice system. This problem

<sup>5</sup> Latinobarómetro, 2003-2006.

<sup>6</sup> Corre, Jorge y Barrios, Luis (eds.), “Justicia y marginalidad. Percepción de los pobres”. (Justice and marginalization. Perception of the poor) Corporación de Promoción Universitaria, Santiago, 1993.

**“The rich and powerful  
cannot always rely on  
justice”**

affects their investments directly. Alejandro Werner Wainfeld, Director of the IMF's Western Hemisphere Department, confirmed that corruption and conflicts of interest hinder productive investments in Mexico. According to this high-level representative, "The fact that we have a justice system that is inefficient, unpredictable and slow clearly makes us much less competitive against other countries equipped with a justice system that is much more agile, impartial and focused on resolving commercial conflicts<sup>7</sup>."

Although these are only a few examples, they seem to properly depict the social perception that exists regarding the justice system. This is a problem that currently affects society as a whole, although in a different manner. Another aspect that must be mentioned is the access to justice due to a lack of resources as one of the main issues of justice throughout the region. However, the rich and powerful cannot always rely on justice. The issue is much more complex and it cannot be resolved only with money. For the wealthy and the business class, impartiality, corruption and slowness can also be a problem.

Rare instances of cases that are resolved quickly or when the accused are powerful groups that have also held high-level positions in the state administration are not necessarily good examples of judicial rigour and competence. In reality, many cases involve the application of selective justice. Accused individuals immersed in a fight for power between influential groups will lose, and this explains why they are accused and then convicted quickly and expeditiously. Therefore, trials are a reflection of the power relationship between strong, opposing interests, instead of a potential example of rigour, effectiveness and the application of the principle of equality for all citizens before justice, regardless of their social, economic and political condition<sup>8</sup>.

This lack of faith in justice results in a number of serious implications. One is the search for justice outside the law. This includes cases in which popular justice is applied, without any type of guarantee or presumed innocence for the "supposed" criminal, that usually result in lynchings. Aside from these types of dramatic cases, a concept worth mentioning is the search for alternative formulas

<sup>7</sup> "Conflictos de interés y corrupción en México inhiben las inversiones, alerta Alejandro Werner (Conflicts of interests and corruption in Mexico inhibit investments, alerts Alejandro Werner)", 15/02/15, <http://www.sinembargo.mx/13-02-2015/1248829>.

<sup>8</sup> "Frühling, Pierre, "Violencia, corrupción judicial y democracias frágiles. Reflexiones sobre la actual situación en Centroamérica" (Violence, judicial corruption and fragile democracies. Reflections on the current situation in Central America) *Cuadernos del Presente Imperfecto* 6, Guatemala: F&G Editores, 2008, pp. 341-343).

**“Between 2005 and 2006, the number of pending cases quadrupled the number of cases accepted”**

for resolving conflicts that also avoid the involvement of state justice since it is considered ineffective and slow. Apparently the Mexican business world is a fairly good example. "Twelve years ago we supposedly created a bankruptcy law that was the best in the world and reflected the best practices on an international level. Then we had issues that could have been handled in the courts, such as Comercial Mexicana and Cemex corruption matters. Nobody wanted to go to court and everyone said "we'll work it out on our own because if we enter the judicial system, we're going to be held up". The relative efficacy of legislating laws is just as interesting if the judicial system does not operate properly.

This opinion damages the legitimacy of the justice system and of the state, with the corresponding risk of this dynamic on economic and social development.

#### THE STATE OF JUSTICE

There is data that reaffirms citizen perceptions. This is confirmed by statistical data. One of the obvious symptoms of the problems that exist is made apparent by the low rate of cases solved in relation to the

crimes committed. According to data provided by the Justice Studies Centre of the Americas (JSCA), during the one-year period between 2005 and 2006, the number of pending cases quadrupled the number of cases accepted in countries such as Argentina, Brazil, Costa Rica, Ecuador and Mexico<sup>9</sup>.

Within this statistic, there are countless issues that are related to limited judicial access and independence, followed by a long list of problems, such as an inadequate administration of the staff members, resources and cases that reach justice; insufficiently trained and skilled civil servants; improper incentives; and a lack of operational transparency. Since the 1990s, attempts at reform have been unable to avoid the collapse of a power that has not achieved independence, that still has not democratised its governance system, that has not been able to control abuse in how state powers are exercised, and that does not provide guaranteed access to justice for everyone, as has been the case of the Andean region<sup>10</sup>. These internal issues are combined with a lack of coordination with other institutions whose efforts directly affect investigations and therefore the ability to clarify events. As a result, in many cases

<sup>9</sup> "La Seguridad Pública en las Américas: retos y oportunidades" (Public security in the Americas: challenges and opportunities) OEA, 2008, p. 30. <https://www.oas.org/dsp/documentos/Observatorio/FINAL.pdf>.

<sup>10</sup> VVAA, "La reforma judicial en la región andina. ¿Que se ha hecho, ¿Dónde estamos? ¿Dónde vamos?" (Judicial reform in the Andean region. What has been done? Where are we? Where are we going?). Lima: Comisión Andina de Juristas, 2009.

“Justice is the power with the least authority”

the relationship between the public prosecutor's office and security forces is based primarily on distrust and obstruction rather than on coordination and collaboration<sup>11</sup>.

As a result, judicial decisions are late, inconsistent, unpredictable, uncertain, and insufficient in terms of reasoning. Specialists agree that the justice system does not provide what is expected of justice, which is access for the entire population in conditions of basic equality, a reasonable period of time for resolving the conflicts that are submitted and impartial decisions that impose appropriate solutions. However, these issues are anything but new; they have existed for a long time.

Any attempt to understand the reasons behind this situation must accept that they are not new, they affect the system's structures and are related to the judicial power's lack of independence with regard to formal as well as informal authority. Ultimately, justice is the power with the least authority and it is influenced by third parties. The consequences of the problem not only affect the citizens that are directly impacted by the judicial system, but also the social system as a whole as well as the initiatives and the projects of any nature that are undertaken since the authority aimed at resolving conflicts and executing the limits

established by law for the actions of those who govern is weak.

In order to understand today's issues, the reforms, their concerns and objectives must be analysed since this will provide information regarding their limitations. This step is essential for a proper diagnosis that delves into the causes that hinder the correct operation of justice.

#### 4. PROMOTING JUSTICE REFORMS

In this point, which considers the state of justice and its main issues, it can be assumed that part of the state of justice can be explained by a lack of attention to this power and its absolute isolation. This has been the case historically, but not in the last 30 years. In fact, after this time, ambitious reforms have taken place throughout the region.

The origin of this drive contains a convergence of different processes, but the judicial system holds a relevant position in all of them, which is why it has been necessary to undertake the reforms. Firstly, the economic transformation that began in the mid-1980s and that deregulated markets and modernised the economy must be considered. The second factor is the democratisation process and the importance of human rights. The third factor, increased insecurity, appeared during

<sup>11</sup> Frühling, Pierre, *Violencia, corrupción judicial y democracias frágiles. Reflexiones sobre la actual situación en Centroamérica*, (Violence, judicial corruption and fragile democracies. Reflections on the current situation in Central America), pp. 344-347.

## “Market economies increase judicial”

this time (in the 1990s). The last factor is the emergence of new concessions and social demands of an ethnic, cultural and gender nature, which also turned to justice for acceptance.

### STATE WITHDRAWAL AND MARKET GROWTH

To a greater or lesser degree, all the countries in the region began an economic transformation process with the state's withdrawal. The intervening state, which was so characteristic during the second half of the 20th century, began to dismantle itself. This means that as it ceases to be the largest investor, the largest employer and the entity that controls prices, social and economic conflicts are no longer resolved in executive courts and in judicial districts.

Open market economies are established, and differences and conflicts are resolved in the market; beyond this area, the judicial system must resolve them. This aspect gives the judicial system a more important role along with additional pressure to guarantee its correct operation. Market economies increase judicial conflicts because of deregulations as well as more and increasingly complex business transactions. As a result, this area has requested the creation of more courts, higher judicial budgets, efficient budget management, additional judicial training in commerce

and finance matters, and the search for alternative conflict resolution systems.

### DEMOCRATIC TRANSITIONS

Along with the demands involved in market deregulations, democratic transitions are another factor that has pressured judicial reforms. Defending human rights becomes a central issue, and the way in which human rights violations were resolved in past dictatorships is an additional reason to highlight judicial power. It is understood that judicial power is an important pillar for defending the rule of law and for protecting basic citizen rights.

In line with this approach, the main concern from this perspective is the democratisation of judicial power by increasing the adherence of judges to democratic values as well as their independence.

### CITIZEN INSECURITY

Since the 1990s, increased criminal violence and the establishment of organised crime has been another important reason for promoting criminal justice reforms. This matter has been a constant concern, and ultimately it has become a priority for all citizens. This social pressure has required all the governments in the region to pay close attention to the need for these reforms.

**“The justice system. Overall, the level of ignorance and of knowledge regarding the justice system is rather shocking”**

#### ACKNOWLEDGING DIVERSITY

Justice has also gained importance by having to resolve complex conflicts related to matters that have inspired debates throughout society. The progressive acknowledgement of diversity from individual, social, ethnic and cultural perspectives has resulted in crimes that must ultimately be resolved by the courts. Matters of discrimination against women or the rights of gays and of indigenous people have given the concept of justice a special importance and presence, as opposed to its traditionally socially insignificant power<sup>12</sup>.

In effect, the convergence of the highlighted matters removes justice from its historical isolation, as it had always held a secondary position in Latin America. This trend has progressively shifted in the last 30 years. It has even been the focus of the media's attention, although the issues and problems addressed have been handled with a good dose of sensationalism but without thoroughness or rigour. However, for quite some time, universities have not focused on studying the justice system. Overall, the level of ignorance and of knowledge regarding the justice system is rather shocking.

#### 5. JUSTICE REFORMS, THEIR SCALE AND RESULTS

Once the issues have been stated and the factors that play a role in increasing awareness of the need to undertake justice reforms have been considered, the wave of reforms taking place is clear proof of the understanding of this power's importance.

#### THE SCALE OF REFORMS. THEIR SCOPE AND REPERCUSSIONS

The scale of the changes, the efforts put forth and the resources invested are proof of the importance given to the sector. Since the 1980s, changes have been made to the legal framework, organisation and budgets of the justice systems of nearly all the countries in the region. Numerous reform programmes with virtually unlimited funds from foreign agencies were designed. Also, since then, judges and public prosecutors have continued to exchange national, regional and international experiences through debates focused on important matters, such as the role of judicial power and the institutions related to its efforts. The material resources that courts began to have access to, were just as important, and their modernisation,

<sup>12</sup> For information on the causes that have boosted the importance and visibility of justice, while favouring its reform, please refer to Jorge Correa Sutil, "Acceso a la justicia y reformas judiciales en América Latina. ¿Alguna esperanza de mayor igualdad?," (Access to justice and judicial reforms in Latin America. Any hope of greater equality?) <http://www.cejamericas.org/Documentos/DocumentosIDRC/117Accesoalajusticiayreformasjudiciales.pdf>.

“Access to justice was also addressed”

computerisation and general improvements were visible and tangible.

Analysing some of the reforms gives us a more accurate idea of their scale and scope. As part of their transitions to democracy, Argentina, El Salvador, Panama, Peru, Costa Rica, Colombia, Paraguay and Ecuador changed their constitutions to create "Councils of Magistrates" aimed at governing their judicial branches. At that time, Guatemala, Honduras, Chile and Nicaragua discussed similar constitutional reform projects. A similar number of countries reformed their constitutions to guarantee that a minimum amount of state budgets would be allocated to judicial power, establishing that the magistrate bodies would administer the money in question. This was the case of Costa Rica, El Salvador, Guatemala, Honduras, Panama, Bolivia, Paraguay and Ecuador. The efforts made to regulate judicial careers so they are only based on professional merits have been just as important. Most Central American nations modified their constitutions for this aspect: El Salvador and Panama in 1991, Honduras in 1992, Costa Rica in 1993 and Guatemala in 1985. Argentina did the same in 1994. Other countries, such as Colombia in 1991 and Paraguay in 1992, changed their systems for appointments, and Chile and Peru made similar modifications in 1998 and 1992, respectively.

<sup>13</sup> Ibid., about these reforms.

Changes have also been made to criminal proceedings and to strengthen public prosecutor's offices. In the same decade, Argentina, Guatemala, Costa Rica, Colombia, Peru, El Salvador, Uruguay, Venezuela, Chile, Honduras, Ecuador, Bolivia, Nicaragua and Paraguay approved legislation for this matter.

In addition, most of the countries in the region did not ignore the importance of providing continued education to their judges and in training those who aspired to be judges. Judicial Schools were created for this purpose, and the efforts put forth by Costa Rica, El Salvador, Guatemala, Honduras, Panama, Bolivia, Colombia, Chile, Paraguay and Uruguay deserve a special mention<sup>13</sup>.

Lastly, access to justice was also addressed. To ensure that it was available and universal, programmes for improving free legal assistance were discussed, and the role of "Public Defender" was established or considered. In addition, programmes and projects for alternative conflict resolution systems were implemented in all the countries throughout the region and judicial offices were modernised.

#### ISSUES ANALYSED AND ACHIEVEMENTS ATTAINED

However, despite everything, there is full awareness that the link between the effort made

**“Increasing human and material resources is not necessarily the solution”**

and the results obtained is not proportional. The results have been limited. The main issues that were focused on were the independence of judicial power as well as the efficacy of justice and its accessibility. The main improvements were noted in the independence of judicial power, while the two other matters remained far behind.

- **Independence:** Considerable progress has been made. Major steps have been taken in terms of establishing formulas that hinder the interference of other powers. However, the independence of judges is a matter that remains primarily unresolved.

Some countries, but not all, have adopted systems that are more transparent for defining the profile of a judge, public prosecutor or public official, along with mechanisms for transparency throughout the process. Selection criteria continue to be based primarily on personal relationships instead of professional merits. In the same sense, evaluation methods are just as necessary, but Colombia seems to be the case that stands out the most.

- **Efficiency:** A number of processes were carried out for this purpose in the 1980s and 1990s. The main issue is that they

addressed management matters without taking into consideration other reforms. In the 1990s, aside from this compartmentalisation, efficacy was considered to be an issue that only affected administrative matters.

A number of cases can be mentioned, such as Colombia and partly Chile and Peru. In these cases, computerisation was introduced as a tool for increasing efficacy. However, increasing human and material resources is not necessarily the solution if the same management issues are repeated. In other words, improving efficacy is not necessarily a matter of adding more human or material resources if the issues that truly hinder efficacy are not resolved. In reality, the aim is to organise the justice administration according to rational criteria. This is not always a matter of quantity, but rather of quality.

Another issue is the resistance of judges and public prosecutors since certain reforms could modify the structure and distribution of power within the organisation, thereby lowering the position of these agents. In addition, applying partial and insufficient changes has made it impossible to reach a level of efficiency that is unacceptable in many cases.

“A multi-cause perspective must be used to perform a complete analysis”

- **Access to justice:** This is a pending matter that reforms have not been able to resolve. The economic, social, cultural and ethnic inequalities that exist in the region also affect justice. A significant portion of the population faces considerable inconveniences in order to access justice (distance, a lack of resources, language issues<sup>14</sup>), but even if these matters are overcome, justice fees and discrimination are additional barriers that make it difficult to implement the ancient principle of 'equality before the law'. However, this issue goes beyond justice; it affects the basic characteristics of society. The solution to this issue does not lie in the justice system, and therefore any reforms that are applied for this matter will not be able to resolve the problem of inequality and discrimination that is present in all orders of society<sup>15</sup>.

In this area, it is worth highlighting that despite the importance of the progress that has been made, it is not enough. The current benefit is that the level of accumulated experience and knowledge is much higher

than in the 1990s, making it possible to undertake pending reforms with more criteria and precautions. It is important to continue with matters that have already been undertaken, but with a different focus and approach.

## 6. MISTAKES MADE AND LESSONS LEARNED

A main issue that explains the limitations and even the failures is the lack of knowledge in this area and the fact that it has not always been addressed properly. In any case, a single cause does not exist that explains the limited results of reforms. A multi-cause perspective must be used to perform a complete analysis.

The existence of reform failures does not mean that there are no solutions available for justice issues, regardless of their gravity. This is why the design and application of reforms must be examined. This information is essential since errors can be avoided by examining the changes that were intended to be implemented and how they were carried out so mistakes are not repeated.

Everything indicates that failed reforms are primarily due to a lack of a proper diagnosis of the

<sup>14</sup> The fact that Peru has redacted a sentence in Aymara is good news (although symbolic). This would be an example of accessibility to justice in multi-ethnic and multi-cultural nations. El País, 21/03/2015, [http://internacional.elpais.com/internacional/2015/03/21/actualidad/1426967054\\_237944.html](http://internacional.elpais.com/internacional/2015/03/21/actualidad/1426967054_237944.html).

<sup>15</sup> For information on progress and limitations of reforms, refer to Luis Pásara, "Reformas del sistema de justicia en América Latina: cuenta y balance", (Reforms on the judicial system in Latin America: account and balance) <http://www.juridicas.unam.mx/inst/evacad/eventos/2004/0902/mesa11/278s.pdf>

“The specific reality of each country must be considered”

issues to be resolved, the correct selection of appropriate solutions, insufficient aptitudes for executing them, and the inability to overcome opposition to change. All these limitations have affected reforms to a certain degree and they explain the limited results.

In this regard, the lessons learned are essential since they provide additional possibilities for establishing a reform that adapts to reality. The most advisable alternative would be to identify items that can feasibly be undertaken. In general, prior reforms have focused on objectives for the justice system that are not viable for resolution through the system in question. Social justice, real equality or resolving all conflicts have repeatedly been the objective of judicial reforms throughout the region. Strictly speaking, these aspects are not the responsibility of the justice system but rather of policies.

Realistic objectives are those that address conflict resolution between individuals as well as the constitutionality and the legality of government actions. Any attempts beyond this, to the degree that the justice system's capabilities are exceeded, will undoubtedly lead to failure and frustration. In summary, the aim is to adapt expectations and to establish objectives that are much more modest and in line with existing possibilities. To do so, the specific reality of each country must be considered. With regard to this specific reality, the strength of the state

in each case will be an essential element in designing more ambitious reforms and it will be increasingly possible to execute those reforms successfully.

With this generic approach, it would be advisable to focus on more specific matters related to the approach for the reforms, the nature of the issues, the agents that have carried them out and the funds available. The combination of these factors shows the complexity of a reform:

- **What is the best reform?:** The first matter is to consider the best reform since the most obvious one is not always the most suitable. Classic solutions, such as new laws, higher budgets, more courts or mass judicial purges have not had spectacular results, and at times they have even been counter-productive. It has been confirmed that higher salaries, on their own, do not lead to better results since they do not guarantee sentences that are less corrupt or more appropriate. As far as the threat of purges, these can result in more abuse by individuals attempting to gain illegal benefits before leaving their posts.

Beyond opposing or hindering change due to individual interests, as has occurred in many instances, it is not enough for everyone to agree that

## “Evaluations must continuously take place”

a reform is necessary; instead, everyone involved must agree on what should be changed. Once this consensus has been reached, it must also remain. Aside from starting the reform, this consensus must continue in order for the reform to be applied. Certain participants may decide to leave the alliance once they have reached their objectives, or their decision to abandon may be due to the fact that continuing with the process will interfere with their direct interests.

A basic criterion for defining a reform is to make a good diagnosis. Problems cannot be resolved if their causes have not been identified. For this reason, comprehensive and thorough analyses are essential, and they must not be performed by the interested parties (or at least not alone). Many actions have been undertaken armed with only basic knowledge and without a strategy, resulting in categorical failures.

However, in addition to identifying issues and their causes, evaluations must continuously take place in order to detect potential and unforeseen reactions to the changes made. This will allow making the necessary adjustments for reaching the proposed reform objectives. A certain

degree of flexibility is needed in order for the project to be adapted to new circumstances.

- **Focus of reforms:** A basic matter for an appropriate diagnosis is based on the focus used to address the issues. The focus has traditionally been mechanistic. Using this approach, the aim was to resolve the justice system's issues by introducing isolated innovations through the approval of new laws. The reference for this was the experience of other nations, primarily European countries and the United States.

The process of overcoming this approach, which was implemented by national and international agents, commenced in the 1990s when people began to understand that isolated solutions could not provide suitable results. Issues were usually caused by multiple factors that should be addressed concurrently. As a result, in the wave of reforms that took place in the 1990s, international agents began to adopt increasingly complete and integrated strategies. It was not enough to change laws. It was also necessary to address staff training, appointment systems based on recommendations instead of merits, administrative systems

“All of this highlights the complexity of judicial reforms”

that were vulnerable to corruption, poorly equipped facilities, etc., but in an integrated manner and in accordance with the specific circumstances of each country.

The alternative of applying a systematic focus, as has been done in recent years, has generated results. However, structural issues must continue to be addressed since they have not been resolved. Using this approach, more laws have been modified, but without focusing on their quality. Investments have been made in infrastructures, equipment and training programmes, but appointment systems are still controlled by personal contacts and subjective criteria, disciplinary and evaluation systems do not exist or are not applied, and the number of unresolved cases continues to grow. The judicial system has continued to be purged, but vacancies are filled with recent graduates who are not properly trained.

All of this highlights the complexity of judicial reforms. There is clearly more than one way to create the best reforms. Effective institutional change works through a series of interrelated mechanisms and depends on their combined influence as opposed to their individual

impact. Reality makes it clear that despite all the efforts, it seems that they are not enough and that a specific diagnosis for each case is needed.

- **Budget:** In the 1990s, international agencies issued blank cheques. Assistance from US-AID, Europe and Japan, loans from the World Bank and the Inter-American Development Bank, and higher budget allocations for justice in each Latin American republic have made it clear that the issue is not just a matter of money, but rather of how it is spent.

Today it seems that unlimited funds, although not yet fully under control, are no longer available. In any case, access to additional resources and higher budgets thanks to external funding resulted in a considerable waste of resources. It is easier to build new offices, buy computers and hire staff than to change the existing staff. This method does not resolve issues, but there is no resistance from the sector and the results can be seen quickly although with a short duration. Structural obstacles remain and become more serious since there are more employees and offices reproducing the same issues that have existed in the past. Beyond budgets, without rationalised expenses,

“International agencies play a major role in providing funding and technical assistance”

control mechanisms or transparent usage, instead of resolving issues and regardless of the resources available, corruption practices may become increasingly common.

- **Human Resources:** Once it is clear that the availability of resources is not always the solution, as has been shown in the field of justice, an essential aspect is the training available to the individuals who comprise the justice system. In this case, there are major shortages. There is a significant lack of education and training for the staff performing justice duties. However, the limitations are more extensive because even if it were possible to replace those workers, candidates with additional training are not available.

Selection systems must be improved, but this will not be enough if universities do not provide the right training and education. If universities are unable to prepare the professional staff needed for reform processes, then those reforms cannot be carried out.

- **Consensus:** Consensus is needed to design as well as to apply reforms. Despite identifying the best reform possible, if there is a lack of agreement, then it may be difficult to execute. It is recommended to involve multiple entities and to

avoid exclusions. This is a basic matter, and if it is not followed, then excluded sectors may place obstacles and resist the proposed changes in order to boycott the process. The essential participants of a reform include judges, public prosecutors and lawyers. Latin America's experience has made it clear that these are the main agents who oppose change. However, it is useless to attempt a reform without their involvement since they play major roles. Together with them, politicians must strengthen rules and approve budgets, civil society organisations and international cooperation agencies.

- **International agencies:** Their distinction is justified due to their importance in Latin American justice reform processes, as opposed to the weakness of national agents. There are many cases in which reform initiatives have been driven by international agencies. With time, there is a certain degree of national appropriation of justice reform processes in most countries. This means that although international agencies play a major role in providing funding and technical assistance, they no longer fill that original role.

These initiatives have enabled reforms in certain countries, and agencies

**“The positive effect of a justice system that operates well on development is undisputed”**

have even protected local groups that pushed to implement changes. In reality, no changes would have been possible without their presence. However, this does not mean that their mistakes should be ignored. Transferring institutional designs without considering the special characteristics and adaptability of each case, wasting resources without a clear strategy, and carrying out activities aimed at boosting their own image rather than improving real issues are some of the matters that have occurred repeatedly. Actions that were easier to carry out when national agents did not show a great deal of interest in assuming the necessary roles and responsibilities.

## 7. CONCLUSIONS

Following the description of the current state of justice and of the failed reform attempts that have taken place in the region, it is worth asking whether a reform that would resolve all the issues in question can be designed. In other words, can justice be reformed? The answer is definitely "yes".

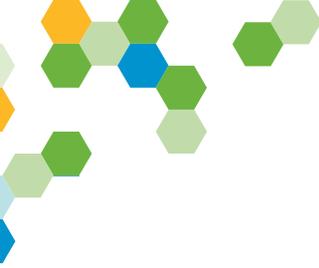
As stated earlier, it is important to contemplate the mistakes made and the lessons learned. This is essential in order to begin an appropriate diagnosis, and even if there is not enough data, the reality is that the deficiencies that have been detected must be

resolved in order to carry out improvement projects.

Beyond all the factors mentioned, rhetoric must also be omitted. The extraordinary expectations attached to executing reforms have only resulted in disappointment and scepticism towards new initiatives. The importance of justice and the need for reforms must be made clear, but this does not mean that reforms are the solution to economic and/or social problems because, regardless of how justice operates, it has no control over those matters.

In this regard, it is surprising that the solution to the top concerns of Latin American citizens, such as security and development, are the responsibility of the justice system. Although the justice system's operation is an essential element for both matters, this does not mean that they can be resolved through justice reforms. The operation of criminal justice would lower the high levels of impunity that currently exist, and this would affect insecurity, but because violence and crime are driven by other factors, improving justice would only have a partial improvement, without resolving the issue.

Development should be understood in the same manner. The positive effect of a justice system that operates well on development is undisputed, but since development does



**“It is advisable to consider existing limitations”**

not depend only on the justice system (although it is an essential pillar), justice alone will not generate economic growth.

The best approach is the realistic one. Reforms must be delimited by their results in order to avoid additional disappointments, which ultimately affect the credibility of new initiatives. It is unrealistic to expect a justice system with magnificently trained professionals if universities are unable to educate them at that level,

or a justice system without corruption if corruption exists in the rest of society. It is also important to understand that the justice system's operation depends on institutions that go beyond their authority and jurisdiction, and if these institutions do not operate properly, this will ultimately affect justice. Therefore, it is advisable to consider existing limitations when establishing reform objectives. This may result in greater achievements than those attained to date.

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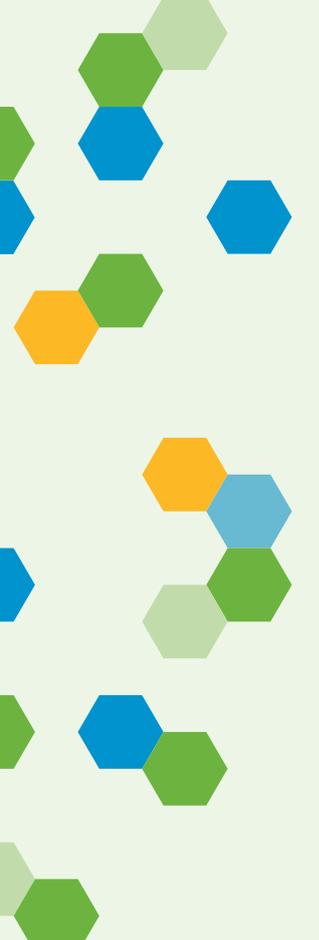
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