

Paths Toward Police and Judicial Reform in Latin America

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Democratic regimes are now established in most countries in Latin America. In a democracy, the police and judiciary are expected to be a) independent from the government, the military, political parties and interest groups; b) accountable to the law and the community; c) effective and efficient in performing their missions, which are defined as providing security and justice to the citizens they serve; and d) equally accessible and responsive to all citizens and groups in society. In response to the growing perception that police and judicial institutions fall short in most of these areas, efforts to reform them have developed in many Latin American countries.

Developing institutions committed to the protection and promotion of democratic values, and capable of providing security and justice in extremely unequal societies is an arduous, long-term process. Reforming police and judicial institutions inherited from authoritarian regimes is very complicated. In fact, many experts hold that democratic police and judicial institutions are far from established in the region.¹ In many cases, the police and judiciary are actually viewed as an inherent obstacle to reform, because they are seen as corrupt and under the control of organized crime.

To make matters worse, democratic governments are frequently criticized by groups at opposite ends of the political spectrum. From the political right, democratic governments are criticized as being too "soft" on crime, and therefore not capable of controlling crime — particularly organized crime. The political left also criticizes the governments as being weak

and too "soft" on police and judicial misconduct. This group contends that government officials, therefore, are incapable of controlling state violence, including executions, torture and arbitrary detention, or corruption involving police officers, prosecutors and judges.

THREE PATHS TOWARD REFORM

The objective of this bulletin is to illustrate three different paths to police and judicial reform in Latin America, and to establish a relationship between reform paths, primary objectives and strategic means of implementing the reforms.² Three paths toward police and judicial reform will be discussed, emphasizing differences in the nature of the reform depending on the extent to which the process is driven by international actors, the national government or civil society.

The three paths presented are not the only paths to police reform. The nature of the reform process will vary depending upon the relationships between international actors, the government and civil society in each country. Furthermore, the process of reform in particular countries may change course or combine more than one of the three paths described below. This bulletin is intended to open, not conclude, a debate on the different paths to police and judicial reform in Latin America.

First Path: Reform Monitored by International Actors

In this path, international actors (foreign governments and/or international organizations) monitor the process of police and judicial reform. The primary objective of the reform



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process is the independence of police and judicial institutions from the government, the military, political parties, and powerful interest groups. The preferred strategy is the creation of new police and judicial institution or the imposition of major changes within the existing institutions.

There are two main variants of this path. Police and judicial reform may follow an intervention by international actors. In this case, the international actors responsible for the intervention play a leading role in the reform process—this the case in Haiti and Panama. Alternatively, police and judicial reform may be one facet of a country's peace process, in which case, international actors monitor or facilitate the reform process—this is the case in Guatemala and El Salvador.

Second Path: Reform Led by the Government

In this path, the government, largely independent of international actors and civil society, leads the process of police and judicial reform. The primary objective of the reform process is the effectiveness and efficiency of police and judicial institutions. The preferred strategy is the creation of governmental and/or internal controls to increase the effectiveness and efficiency of police and judicial institutions.

There are two main variants of this path. Government authorities may lead the reform process. In this case, the strengthening of extra-gov-

ernmental controls will be favored over the strengthening of internal controls as a strategy to improve police and judicial effectiveness and efficiency—this is the case of Colombia and Peru. Alternatively, police and judicial authorities may lead the reform process. In this case, the strengthening of internal controls will be favored over the strengthening of extra-governmental controls—this is the case of Chile.

Third Path: Reform Through Political Agreement

In this path, police and judicial reform develop by means of an (explicit or implicit) agreement between government officials and civil society actors. A reasonably organized civil society and the presence of moderate groups within the government and civil society, who are capable of jointly supporting police and judicial reform, increase the chances of reform through this path. Argentina and Brazil are two cases in which police and judicial reform follow this path.

Protests and pressures from civil society play a central role in the reform process, but they alone are not sufficient to produce police and judicial reform. Such pressure is vital, however, because government authorities rarely initiate police and judicial reforms, even when confronted by high incidence of crime, violence and corruption, unless influenced by civil society. In turn, civil society actors often influence the scope of the reform process. If the reform develops through political agreement and civil society is reasonably strong, the central objectives of the reform process will be accessibility to police and judicial services, and the responsiveness of police and judicial institutions to the citizens. The creation of governmental and/or societal controls will be the preferred strategy to achieve this objective.

This path is extremely dependent upon the strength of the government and the influence of civil society. The strength of the civil society is crucial to determine the extent to which the accessibility of police and judicial services and the responsiveness of these institutions will be the primary objective of the reform process—rather than the effectiveness and efficiency of police and judicial institutions, as in the path described above. It is also crucial

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Paths to Police and Judicial Reform in Latin America			
Paths	Objectives	Means	Examples
Externally Monitored			
International Intervention	Independence	New Institutions	Haiti/Panama
Peace Process	Independence	New Institutions	Guatemala/El Salvador
Government Led			
Government/Corporation	Effectiveness/ Efficiency	Government/ Internal Control	Colombia
Government/Corporation	Effectiveness/ Efficiency	Government/ Internal Control	Peru
Corporation/Government	Effectiveness/ Efficiency	Internal/ Government Control	Chile
Political Agreement			
Government/Civil Society	Access/ Responsiveness	Government/ Social Control	Argentina
Government/Civil Society	Access/ Responsiveness	Government/ Social Control	Brazil

to determine the extent to which societal controls will be the preferred strategy to achieve this objective, instead of governmental controls.

OBSTACLES TO REFORM

All of the paths have the potential to improve the state of citizen security in Latin America. No path is inherently superior to the others. Furthermore, societies can rarely choose their paths to reform. In most cases, the relationship between national and international actors, as well as between the government and civil society, dictates the paths that a country takes.

There are many obstacles to the consolidation of democratic police and judicial institutions in Latin America, the most serious of which are; legacies left by a long history of authoritarianism; political dependence; corrupt bureaucracies; and, a lack of professionalism in the forces of law and order. In addition, democratic governments, even those that have the support of active civil societies, have been unable and sometimes unwilling to support more comprehensive police and judicial reforms.

Instead, they have chosen to focus on particular dimensions of the reform process. The problem with this strategy is that police and judicial reforms cannot be effectively consolidated or produce signifi-

cant results if they do not comprehensively address questions of police and judicial independence, accountability, effectiveness, efficiency, and the accessibility and responsiveness of these institutions to the citizenry.

The question of the independence of police and judicial institutions normally takes precedence over the establishment of supervisory controls. In countries where the independence of police and judicial institutions is more established, as in Argentina, Brazil and Chile, legislators and policymakers frequently engage in long debates and intense conflicts over the value of internal, governmental and societal controls of police and judicial institutions. The debate is extremely important to define priorities, however the experience of democratic societies shows that the three types of control are not incompatible. The consolidation of democratic police and judicial institutions depends, instead, on a combination of internal, governmental and societal controls. The particular type of control that emerges in each country—or the particular combination of different types of control established in each country—is determined less by analyses of costs and benefits than by the conditions and opportunities for police reform and the reform paths taken in each country.



CONCLUSIONS AND POLICY RECOMMENDATIONS

The consolidation of democratic police and judicial institutions is a complex and difficult process. While there are multiple paths toward these ends, the consolidation of democratic and judicial institutions depends ultimately on a series of reforms. The chances of success can be expected to increase, if reform efforts include the following:

- The support of relevant political actors, particularly legislators, policymakers and civil leaders.
- The support of police and judicial authorities.
- An enlargement of the space between police and judicial institutions and the government, military, and political parties.
- A decrease in the space between civil society and police and judicial institutions.
- The development of internal, governmental and social controls to increase the accountability, effectiveness, efficiency and responsiveness of forces of law and order.

NOTES

1. Agüero, Felipe and Stark, Jeffrey, eds. 1998. *Fault Lines of Democracy in Post Transition Latin America* (Coral Gables: North Center Press).

Mendez, Juan, O'Donnell, Guillermo and Pinheiro, Paulo Sergio, eds. 1999. *The (Un)Rule of Law and the Underprivileged in Latin America* (Notre Dame: University of Notre Dame Press).

Yamin, Alicia. 1999. *Em caminho ao século 21: desafios e estratégias da comunidade de direitos humanos* (Washington, DC and Lima, Peru: Washington Office on Latin America and Instituto de Defensa Legal).

2. For a summary of the ideas presented in the paper, please see the table, "Paths to Police and Judicial Reform in Latin America." (Page 3)

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