

SUMMARY¹

INTER-AMERICAN DIALOGUE PANEL DISCUSSION “Democracy and Rule of Law in Latin America”

Speakers

- Catalina Botero Marino (Professor of Constitutional Law; Associate Justice of the Constitutional Court of Colombia),
- Kevin Casas Zamora (Senior Fellow & Programme Director, Peter D. Bell Rule of Law Program, The Inter-American Dialogue, USA),
- Carlos D. Mesa (Former President of Bolivia),
- Ronaldo Porto Macedo Jr. (Senior Assistant to the Attorney General’s Office of the State of São Paulo, Professor FGV São Paulo School of Law) (Chair)

Overview

Speakers discussed challenges and threats to the Rule of Law in Latin America from different perspectives:

- Ms Botero’s speech highlighted what she perceives to be the three biggest threats to the Rule of Law in Latin America: poverty and social exclusion, organized crime, and populism. The main challenge, suggests Botero, is waging the war against corruption without compromising the Rule of Law.
- Mr Casas Zamora focused on the state of citizen insecurity and its effect on democracy. According to Casas Zamora, levels of violent crime in the region and widespread perceptions about them have clear effects on citizens’ exercise of fundamental rights and freedoms. Rising levels of perceived insecurity are jeopardizing conditions that are essential to the survival of democracy in the region.
- For Mr Mesa, an essential part of the debate in a time of crisis such as the one

¹ This Summary was prepared for the Bingham Centre by Patricia Regules and does not reflect the views of the Bingham Centre for the Rule of Law.

Brazil is currently experiencing, is whether the Rule of Law is being properly fulfilled or not. Mesa argued that the answer will differ given the contextual differences among Latin American countries. As an example, challenges to the Rule of Law will vary greatly depending on whether we are referring to Uruguay, a country with great respect for Rule of Law, or Venezuela, a country where infringement of the Rule of Law is systematic.

- Lastly, Mr Porto Macedo briefly spoke about institutional reform in Brazil, underscoring the use of new mechanisms for establishing and prosecuting alleged crimes such as plea-bargaining and leniency agreements in return for testimony.

Details

1. Social and economic inequality must be addressed in order to strengthen democracy

Panellists agreed that there is a body of evidence suggesting that Latin America is one of the regions where democracy is valued least and conversely, democracy is associated with dwindling or difficult economic conditions. That is to say, in order to strengthen democracy, we must first improve our economies, emphasised Botero. For Casas Zamora, there is an empirical relationship between socioeconomic inequality, citizen insecurity, and corruption. Therefore, we must address this issue very seriously in order to envision a future for democracy in the region- we must build more inclusive and equal societies in order to fight perceived insecurity and corruption, concluded Casas Zamora.

2. Freedom of speech and freedom of the press are essential components for healthy democracies

Taking the pulse of freedom of expression across the region has become a means to monitoring the state of democracy, Botero suggested. While efforts must be made in order to ensure the highest levels of speech and press freedom, governments must take an active role in limiting monopolistic abuses by private companies over the media. Mesa cited the case of Peru, where private groups control 80% of national communication channels.

Moreover, while the role of media in democratic states is essential, it still does not guarantee that those who have been publicly accused by the press will be punished. This is where adequate institutional mechanisms in place play a decisive role. As an example, panellists cited Honduras, where despite revelations and accusations of corruption and embezzlement have appeared in the press, 'no one has been jailed yet', remarked Casas Zamora.

3. Corruption and organized crime are still problematic, but some progress has been made

Panellists reflected on the state of corruption in the region, questioning in particular whether there was more corruption at present than in the past.

- As Casas Zamora remarked, 'in the past two years Latin America has seen unprecedented social and institutional reactions against corruption' citing the paradigmatic case of Guatemala, where President Pérez Molina resigned and was prosecuted. The interesting question, expressed Casas Zamora, is whether these reactions are a consequence of increased levels of corruption or not. In turn, Mr Mesa remarked that Brazilian President Collor de Mello's impeachment in 1992 is fundamentally similar to the current impeachment proceeding against President Rousseff. The underlying dilemma in Latin America is that it has failed widely to promote citizenship education. There is a complete lack of collective identity, one that Latin America has not been able to construe. Thus, albeit the 1992 impeachment procedure against Collor de Mello, Brazilians and in general Latin Americans have not yet understood their role as citizens and the way their society is structured. What has changed, continued Mesa, is the level of transparency, which today is much higher than in 1992. Transparency has revealed and exposed the true extent of corruption. In addition, Botero suggested that: 'corruption is now a structural problem, articulated in small cartels that have diversified their business and now operate as a great *holding*, while the region looks the other way'.
- Paradoxically, the corruption scandals we are currently witnessing in Latin America reflect the success of regulatory systems in place, not their failure. According to Casas Zamora, over the last two decades Latin America has increased transparency and accountability especially in the public sector. The amount of reforms that have been approved in most Latin American countries is impressive. States have ratified a number of international conventions against corruption, have enacted laws on access to public information, judicial reform, rules requiring disclosure of assets by public officials, laws against money laundering etc. As a consequence, we are harvesting the seeds of these reforms, which sooner or later were bound to flourish. But the speaker also warned that the effect of increased transparency on democratic institutions is ambiguous, since higher levels of transparency may have a salutary effect on the political system in the long run, but in turn may compromise the legitimacy of institutions in the short-run. What recent scandals underpin is that in some respects, the Rule of Law along with democratic principles is finally taking root in the region.

4. An independent judiciary and prosecution plays an important part in tackling corruption

In thirteen out of nineteen Latin American countries, there have been criminal prosecutions of public officials or their relatives. The success of these criminal procedures has relied on the independence and autonomy of the Prosecution, as well as the Judiciary. Brazil's Ministério Público (Public Prosecutor's Office) is not a role model of independence, and yet, the two most important criminal operations against corruption in Brazil show that these bodies have acted with independence, said Botero. In addition, it is worth noting that in countries where due process was not guaranteed, investigations failed, such as in Ecuador where three people who initiated formal criminal accusations against President Correa were imprisoned, and in Venezuela where media executives who denounced Diosdado Cabello (the former President of the Venezuelan National Assembly) were barred from leaving the country.

A judicial system with independent and impartial judges is an imperative, speakers agreed. However, as Carlos Mesa contended, it is not enough to have ethical or honest judges. It is adamant that judges and prosecutors enjoy greater competence and that they are suitable for office. They need to be able to establish a case, be consistent, and have professional competence.