

PROMOTING RULE OF LAW AND GOOD GOVERNANCE IN LATIN AMERICA AND THE CARIBBEAN

A More Proactive Role for the Private Sector

Summary

Weak rule of law and fragile structures of governance arguably constitute one of the greatest shortcomings in the development process in the Latin America and Caribbean (LAC) region over the last decades. Strong rule of law, supported by solid institutions, is a critical foundation for political stability, economic growth and social development. Weak rule of law, on the contrary, perpetuates corruption, violence, organized crime, and impunity, as well as undermining public confidence in the ability of democratic leaders to provide effective answers to their needs. In most countries of the region, a culture of respect for the rule of law has developed to a much lesser degree than a culture of corruption.

The level and specific characteristics of this culture of corruption vary greatly from country to country. The first step in being able to address this reality is to acknowledge the pervasive and perverse nature of corruption, as well as the fact that the longer corruption is allowed to perpetuate, the more difficult it is to reverse it. A second step is to promote a strong and non-partisan national consensus in support of a culture of rule of law and good governance. In a world where political polarization is increasing, this kind of genuine national consensus is difficult to build.

Governments at the national and sub-national levels have the responsibility to lead efforts to build this consensus and to

promote coordinated public policies in support of the rule of law and good governance. For too long, in many countries of the region, public and private sector leaders have paid little more than lip service to these goals, in part because they do not clearly understand how critical strong rule of law is to promoting national growth and development, and perhaps more importantly because some of them directly benefit from a weak and compromised rule of law.

Society as a whole, including business leaders, civil society representatives, and experts from non-governmental organizations, think tanks, and universities, and with input from former senior public sector leaders who bring a special public/private perspective, must increasingly play a lead role in these efforts, including through greater private-public cooperation. Private sector leaders must assume this more proactive role not only because strong rule of law brings commercial benefits, but also, and most importantly, for the positive impact that it has on national development.

One important goal looking forward is to motivate more active public/private discussions and coordination on these issues at the sub-national, national, and regional levels, including the need for public/private agreement on “policies of state” that transcend political parties and left-right divisions. A more proactive and unified private sector coalition in support of rule of law will be able to speak more forcefully and to contribute

directly – beyond political polarization – to addressing key issues that have held back genuine development in the region.

The Inter-American Dialogue and its newly-established High-Level Task Force on Rule of Law and Good Governance call on all private sector leaders with a genuine interest in promoting a stronger culture of rule of law to join in this effort. This brief puts forward a framework for a more proactive private sector and suggested areas of focus for concrete action-oriented initiatives including the promotion of (1) firm-level anti-corruption compliance; (2) judicial independence and transparency; (3) regulation of money in politics; (4) public ethics and anti-corruption in state modernization; (5) citizenship and public ethics education; and (6) an understanding of the real costs of insecurity and corruption.

Corruption, lack of judicial independence, insecurity and the expansion of social media undermine rule of law and public trust in LAC.

Introduction

Latin America and the Caribbean (LAC) are at present grappling with some of the most difficult political, economic, and social challenges the region has faced in decades: high and rising levels of poverty, inequality, political polarization, corruption, economic informality, violence, transnational crime, and impunity, along with declines in already low levels of economic growth and record drops in public confidence in democratic institutions¹.

The COVID-19 pandemic, which took a disproportionately high per-capita death toll in LAC, global instabilities beyond the Western Hemisphere, including Russia’s war on Ukraine, conflict in the Middle East, and increasing pressure to take sides in the growing US-China competition, and the impact of these factors on global growth and commodity prices, only further exacerbate these already existing conditions in LAC. Finally, deep political polarization and a weakening of rule of law and governance in the US, worsened by a migration crisis on its southern border that is itself linked in large

part to the deteriorating state of affairs in LAC, round out the difficult and challenging context of the Western Hemisphere.

While this list of political, economic and social conditions in the region sounds discouraging, it is important to acknowledge that LAC is blessed with rich natural and human resources, and in contrast to most of the regions of the world, for many decades has benefited from an almost total absence of civil and cross-border military conflict. In terms of natural resources, LAC is one of the globe’s principal breadbaskets with significant surpluses and exports of almost all agricultural commodities as well as many major non-commodity food products, surplus local production of conventional and green energy sources, not to speak of rich reserves of critical minerals. Additionally, it increasingly is serving as a hub for the development of high-technology, internet services, and software². Real progress in addressing its serious rule of law and governance challenges would allow the region to take greater advantage of these strengths.

Common rule of law challenges in the LAC region include:

Chronic inefficiencies and corruption at many levels of the Executive and Legislative branches of government, which directly undermine rule of law by allowing individuals and/or commercial entities to bypass legal procedures through bribery, kickbacks, or other illicit means. This leads, among other results, to distorted markets, unfair competition, burdensome and inconsistent regulatory frameworks, weak property rights, and questionable contract enforcement. Chronic corruption also serves to undermine public faith in democracy and confidence in democratically-elected leaders to provide effective answers to their needs and demands.

Lack of independence, politicization, and corruption within the judicial branch erode trust in the legal system and lead directly to unfair and inconsistent judicial outcomes, particularly in disputes involving powerful interests and politically sensitive issues. This increasingly includes direct interference in the justice system by organized crime groups. By its nature, the justice system is very slow and indecisive in efforts to increase its own efficiency and effectiveness. A captured/politicized court system increases country risk for investors and makes countries in the LAC region less competitive in attracting capital/investment vis-à-vis other regions of the world with less corrupt and more independent judicial sectors.

Insecurity reflected in high levels of crime and violence in many countries in the LAC region, often with direct involvement by organized crime groups, increases the costs of doing business (an implicit “tax” on private firms reflecting

the “cost of crime”). Firms cannot operate without providing their own security and anti-crime protections, functions which should be the responsibility of the State. In the worst cases, regular, illicit company “protection payments” (or *derecho de piso*, as referred to in some locations) to police and security forces, as well as directly to organized crime groups, are often the only effective option to ensure safe conditions for commercial operations, including electronic and cyber operations.

Dramatic expansion of the use (and misuse) of social media and a failure to adopt and enforce standards for the operation of social media platforms while still respecting freedom of expression have contributed directly to deepening political polarization. A key task moving forward is to improve understanding of the concrete dynamics and impact of social media exposure on the general public, and how best to address this impact.

Given these conditions and others, private sector actors in the LAC region have faced for decades serious challenges linked to weak rule of law and institutions. This situation has complicated decisions by both local and international firms on investments in the region, as well as making day-to-day operational decisions more difficult and costly.

From a Culture of Corruption to a Culture of Rule of Law

In a now familiar vicious and self-perpetuating cycle, the corruption that underlies most of the conditions described above directly undermines rule of law and good governance, which in turn results in greater corruption. Years of this reality have resulted in the development of a well-established and sophisticated culture of corruption in many countries of the region.

The level and specific characteristics of this culture of corruption vary greatly from country to country. Several countries in the region (Uruguay, Chile, and Costa Rica) have achieved levels of transparency and anti-corruption that rank them close to (or in the case of Uruguay, above) the United States and numerous European and other developed countries. However, most of the countries of the region rank in the lower half of the world’s countries in terms of perception of corruption³.

Addressing this culture of corruption requires first acknowledging the pervasive and perverse nature of

the challenges, and then defining and implementing comprehensive efforts to strengthen institutions, governance, transparency, and accountability.

Progress with these efforts can be made most effectively based on a genuine and consistently articulated national consensus in support for rule of law, led by the government and with direct involvement and commitment from the society as a whole, including the private sector. With the exception of only a few countries in the region, such a genuine national consensus arguably does not exist.

The increasingly complex and inter-connected nature of global issues, including the expanding regional and global footprint of transnational organized crime and violence and high levels of political polarization, cannot be fully addressed by individual countries alone. Strengthening rule of law and governance in LAC would be enhanced significantly through expanded sub-regional and regional efforts in the Western Hemisphere, including with a more proactive and coordinated role by international organizations, development banks, and the more developed democracies of the Western Hemisphere and the world. Stronger national and regional efforts of this sort in the Americas are even more important at a time when the United States itself is suffering deep political polarization and weakening of its own rule of law.

LAC can tackle corruption and foster a culture of rule of law through coordinated efforts by governments and the private sector.

In parallel with acknowledging and confronting the culture of corruption, it is also critically important to promote at all levels of the polity, economy, and society in the region a strong and comprehensive culture of respect for rule of law and probity. This goal ultimately will only be achieved and solidified with a multi-generational effort to educate and promote within the population a deeper understanding of the importance and meaning of rule of law, good governance, and public ethics. This process should span from primary school through university and extend into professional life, integrating these elements through new educational and training curricula as well as through the development and

use of information and resources that can be disseminated more effectively through new technologies including social media. Well-conceived and well-designed content to address the impact of social media in political polarization, to be shared through multiple means, including through the social media platforms, could contribute to strengthening public understanding of these otherwise abstract topics.

A More Proactive Private Sector

Governments have the primary responsibility to lead efforts at strengthening the rule of law and good governance. While private sector leaders must lend their proactive support and direct collaboration to national governments, they can and should also increasingly take the lead on specific initiatives to promote a culture of respect for rule of law, not only because it may be commercially beneficial for them, but most importantly for the positive impact that this will have in promoting the health and prosperity of their country and society.

Collective and coordinated action by a broadly-defined private sector, including business leaders, civil society representatives and experts from non-governmental organizations, think tanks, and universities, and with input from former senior public sector leaders who bring a public/private perspective, must increasingly play a lead role in these efforts. This more proactive private sector leadership needs to speak more with a united voice nationally and

regionally and to “institutionalize” its genuine concerns over corruption and its support for strong rule of law and good governance.

One important goal looking forward is to generate more active public/private discussions and coordination on these issues at the sub-national, national, and regional levels. Directly related to this goal is the need for the public and private sectors to agree on “policies of state” that extend beyond governments in place at any one time and that transcend political parties and the left-right divisions that have come increasingly to characterize many countries in the region. Such agreed policies of state would serve to establish areas where common interests and neutrality prevail instead of ideological divisions and conflicts. Chile, Uruguay, and Costa Rica, among others, offer some of the best examples in the region of this kind of successful policy experience, which could be shared elsewhere in the region in programs of “South-South” cooperation. A more proactive and unified private sector coalition in support of rule of law and of such “policies of state” will be able to speak more forcefully and effectively and to contribute – beyond political polarization – to addressing some of these fundamental issues that long have held back the genuine development in the region.

While a more proactive and responsible private sector leadership role as here described is no guarantee that this fundamental shift to a culture of rule of law can be brought about, it is increasingly clear that without such a sustained effort by the broad private sector to complement public sector efforts, any significant improvement is not likely.

Proactive private sector leadership is crucial for leveraging resources, expertise, and a vested interest in promoting stable governance and economic prosperity alongside government efforts.

PRIORITY AREAS FOR PRIVATE SECTOR LEADERSHIP ON RULE OF LAW AND GOOD GOVERNANCE

The following is a list of suggested areas of focus for private sector led and supported initiatives. These ideas emerged in discussions that the Inter-American Dialogue's Rule of Law Program staff carried out with a broad range of private sector stakeholders from across the region in recent months, including with members of the Inter-American Dialogue's newly-formed High-Level Task Force on Rule of Law and Governance in Latin America and the Caribbean that met for the first time in Washington, DC on May 16 and 17, 2024. Greater dialogue and coordination on these issues between representatives of the public and private sectors in each country and also regionally would be an important step forward in promoting strengthened rule of law and governance, recognizing that the level of development of rule of law and good governance varies significantly among countries of the LAC region. This list of priority areas is by no means exhaustive and is meant to promote a deeper discussion in the region on these ideas:

1 Firm-Level Anti-Corruption Compliance

While many firms, particularly large ones and most multinational companies (i.e., U.S. firms and individuals are subject to the Foreign Corrupt Practices Act - FCPA), already must comply with strict compliance and anti-corruption standards, this is not the case for most small- and medium-sized enterprises in the LAC region nor for business associations. Firm-level self-assessment and self-regulation are key steps towards establishing basic standards of anti-corruption compliance and corporate governance. Additionally, regular training on anti-corruption policies for private sector leaders and employees would contribute to a clearer recognition that corruption, while it may have short-term commercial benefits, in the medium- to long-term undermines free market competition and economic growth. If the private sector itself misses the opportunity to contribute actively in developing and promoting a general culture of rule of law and high standards of compliance, it runs the risk of having government bureaucrats impose these standards through public policy initiatives that do not necessarily reflect accurately conditions faced by the private sector.

2 Judicial Independence and Transparency

Promoting greater independence and transparency in the judicial branch in the LAC region would contribute directly to de-politicizing prosecutorial and judicial decisions, strengthening the rule of law and good governance, and ensuring greater legal certainty. Innovative approaches are needed to promote judicial independence and transparency, including ensuring de-politicized appointments and removal processes

for judges, and elaborating a roadmap to identify early warning signs and risks for the essential role that independent courts play, as well as strategies to protect them. A much wider use of new technologies and system-wide digitalization is also key. These objectives could be achieved more effectively if they are identified as priorities not only for the public sector but also for the private sector.

3 Regulation of Money in Politics

Illegal contributions to political parties and campaigns are one of the most frequently used means to buy political influence and to corrupt national and sub-national officials in all branches of government, including increasingly with direct involvement and payoffs by organized crime groups. With the goal of developing a better understanding of how to protect public administration the illicit influence of money in politics, it is essential to define reasonable standards to limit, monitor, and report transparently private financial contributions to political parties and elections and to prevent financial contributions from organized crime. In addition to defining and setting standards to control the illicit role of money in politics, an assessment of key obstacles to implement such standards is needed, as well as an active effort to raise public awareness of this grave threat to democracy.

4 Public Ethics and Anti-Corruption as Key Elements in State Modernization

There is an urgent need in most countries of the LAC region for modernizing government operations through capacity building, professional skills training, and broader use of technology aimed at making the State more effective and reducing opportunities for corrupt behavior. High-quality professional instruction for public officials, including specialized training on public ethics and anti-corruption policies, is needed, together with much broader use of high technology tools, including e-government and digitalization of procedures. Strong public sector anti-corruption compliance procedures, which in many cases are direct reflections of firm-level anti-corruption compliance regulations, would contribute significantly to consolidating rule of law, and must be coordinated jointly between the public and private sectors, with a key role being played by business leaders and civil society representatives.

5 **Citizenship and Public Ethics Education**

As political polarization and violence increasingly encroach into schools and classrooms, it is critically important that education systems equip students and teachers with skills and knowledge on basic principles of democracy and rule of law, conflict resolution, teamwork, and pluralistic dialogue. In Latin America, effective models of citizenship and peace education must be focused on addressing the real-life challenges that students face as well as building a solid understanding of citizenship responsibilities and public ethics, which are lifelong skills essential for building more democratic societies. Innovative initiatives to promote a stronger culture of rule of law need to be conceived and established, including exploring public/private models of national civic service for young adults linked both to public ethics and job training, as well as the use of social media platforms and other media for disseminating educational/training content to address political polarization and to promote stronger public ethics, anti-corruption, and rule of law.

6 **Understanding Real Costs of Insecurity and Corruption**

For the private sector, insecurity and corruption generate significantly increased costs, including the need for large private sector investment in sophisticated security systems. Identifying clearly the cost that insecurity and corruption has on operating businesses and to what extent this undermines investment and development, as well as identifying areas of potential private/public collaboration, is key. In many countries in LAC, for example, private security systems generate databases of information that could contribute to more effective public security policies and prosecutions if there was better coordination between the private and public sectors.

Additionally, private sector leadership in pushing for effective public security policies that are implemented within the boundaries of the rule of law is needed to counter the public perception that get-tough-on-crime approaches are the only solution to increasing insecurity in the region. Dual public security policies including effective investigation and punishment of crimes respecting due process, together with well thought out and effective prison policies that return control of prisons to authorities, and with social policies that address the root causes of violence, are essential if governments are to be seen as capable of delivering through democratic means on people's fundamental need for security.

ENDNOTES

1. UNODC, [Global Study on Homicide 2023, Homicide and Organized Crime in Latin America and the Caribbean](#), 2023; UNDP, [Governance, democracy and development in Latin America and the Caribbean, 2022](#).
2. Cárdenas, Mauricio, World Economic Forum, [“Here’s how Latin America can help tackle the global food, energy and climate crises”](#), 2023; Zhang, Pepe and Otaviano Canuto, Project Syndicate, [“Global Leadership for Latin America and the Caribbean”](#), 2023; Velasco, Andrés, Project Syndicate, [“The Primacy of Political Order”](#), 2024.
3. Transparency International, [Annual Corruption Perception Indexes](#), 2023.

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