On June 7, the Americas Program of the Center for Strategic and International Studies and the Justice Studies Center of the Americas (CEJA) of Santiago, Chile hosted a conference which examined efforts at judicial reform in Latin America and "lessons learned" from this process. The conference was structured around the presentation of six case studies evaluating judicial reform in Argentina, Chile, Colombia, Guatemala, Peru and Venezuela and a panel discussion aimed at drawing conclusions. The event, which was sponsored by the Open Society Institute, brought together leading experts from the U.S. and Latin America and attracted a large audience of academicians, government officials, representatives of international financial institutions and civil society and the legal community. A report on the proceedings and conclusions of the conference is forthcoming. Below is a brief synopsis of the presentations.

Alberto Binder, Director of the Public Policy Center for Socialism (CEPPAS), spoke on Argentina’s judicial reform in the wake of the country’s transition to democracy in 1983. Binder noted that a comprehensive approach to reform has overshadowed efforts that would address the specific problems of corrupt judicial rosters, poor macro-level budget design, and an obsolete structure. Also, while reform of the criminal justice system has been successful, other sectors have not realized similar achievements due to political constraints. Looking ahead, Binder suggested that future reform should be the product of an in-depth debate that currently does not exist and that it should address the aspects of the judiciary that directly affect the citizenry. In response to Binder’s points, Russell Wheeler, President of the Governance Institute and Guest Scholar at the Brookings Institution, focused on Argentina’s failures in judicial reform. In addition to a lack of institutionalization of the judicial branch, Wheeler discussed the country’s futile efforts to improve judicial selections and the tendency of the executive branch to manipulate the judiciary, especially in times of crisis.

Cristian Riego, Academic Director of the Justice Studies Center of the Americas (CEJA), addressed the round of Chilean judicial reform that began in the early 1990’s, coinciding with a transition to democracy, as in Argentina. Chile’s reform boasts several examples of success, perhaps due to political stability and consensus, but levels of improvement varied at each stage of reform. Efforts to restructure the judicial branch during the initial phase mostly failed. During the second stage of reform, the judiciary was successfully modernized, mainly in the criminal justice system, with heavy bipartisan support as well as cooperation from the media, academia, and the private sector. However, in the third phase, these reforms failed to extend to other sectors of the judiciary, such as family and juvenile courts. Fay Armstrong, an Administration of Justice Officer with the U.S. Department of State, echoed Riego’s observation that Chile’s successful judicial reform depended primarily on strong political backing. Advancing this argument, she described how such political will was built through much “lobbying behind the scenes.” Armstrong emphasized the need for clear leadership and political will for judicial reform to succeed.

Concluding the first panel was César Azabche, Partner at Vascones and Azabche, who focused on the case of Peru, where a historically centralized judicial system has created several problems on the municipal level. Primarily, the judiciary has a significant lack of regard for the public interest, and the current system of conflict resolution often gives way to corruption. Azabche expressed the need for the judiciary to respond to the people as opposed to public policies aimed at democracy. Eventually, if judges work in the interest of the people, there will be increased democratic participation. Katya Salazar, Programs Director at the Due Process of Law Foundation, replied, claiming
that the main problem in Peru is the poor administration of judicial reform. Despite increased budgets for the judiciary and a functioning Peruvian Constitutional Tribunal, there remain infrastructure flaws that inhibit real change.

In the open discussion, the panelists fielded questions related to transparency and corruption and their influence on foreign investment. The topic of poverty and its relation to the judiciary was also discussed, with Binder commenting that in the short run, there is no link between poverty and conflict resolution.

To begin the second panel discussion, Eduardo Bertoni, Executive Director of the Due Process of Law Foundation, spoke on judicial reform in Colombia. In reviewing Alfredo Fuentes’ work, Bertoni addressed the beginning of reform in 1991, which triggered a series of advances in the judicial system, including infrastructure, budgetary, and procedural improvements. However, as was the case in Argentina and Chile, such changes were made primarily in the criminal justice system and failed to extend beyond this sector. Bertoni also noted the influence of Colombia’s armed conflict on judicial reform.

Luiz Ramírez, the Director of the Comparative Studies Institute on Legal Science, discussed judicial reform and political transition in Guatemala. Guatemala has worked through a relatively successful reform program. Ramírez mentioned a few of the positive effects as an increased budget of institutions, the creation of the Ministerio Público, and the creation of the public defender’s office. However, at the same time, violence in the country has increased and there has been a criminalization of the justice system. Ramírez attributes this to a lack of active public policy rather than to a lack of judicial reform. Still, the current judiciary has several flaws. In particular, Guatemala needs to address its human rights violations, overall limited access to justice, gang-related activities, organized crime, and authoritarian police behavior. Christina Biebensheimer, Chief Counsel of the Justice Reform Practice Group in the Legal Vice Presidency at the World Bank, commended Guatemala for their daring and comprehensive overhaul of the judicial system. Biebensheimer explained that in order to increase the effectiveness of the reforms, better data must be obtained, especially regarding demand for reform. She closed by briefly discussing the link between poverty and the demand for criminal justice reform.

Rogelio Pérez Perdomo, Director of the Law School at the Metropolitan University of Venezuela, was the third speaker on the panel. Perdomo attributed Venezuelan interest in judicial reform to the failure of the democracy in the early 1990’s. He explained that the case in Venezuela is far different from its neighboring countries due to a lack of transparency in the government, which created uncertainty and very poor data. Perdomo elaborated on the recent successes of a comprehensive reform process that Venezuela underwent in 1995. By micro-managing the internal functioning of the courts, Venezuela has increased the efficiency of its judges and improved transparency. Yet there persists a high crime rate in the country as well as a lack of legitimacy and independent judiciary, as pointed out by the respondent, Margaret Sarles. Sarles, Division Chief of USAID’s Office of Democracy and Governance, focused on the lack of reliable empirical data. She also noted the importance of discussing judicial reform in Venezuela because of the nature and timing of reform, the limited roles available to foreign donors, and the symbolism of the judiciary as a reflection of the country’s overall political situation. Sarles closed by presenting a multi-step plan that would involve strengthening the rule of law, increasing judicial independence, and raising the potential for foreign aid.

During the working luncheon segment of the conference, four new experts were introduced to discuss their conclusions and recommendations. The panel included Douglas Cassell, Director of the Center for International Human Rights and Clinical Professor of Law at North University; Linn Hammergren, Senior Public Sector Management Specialist at The World Bank; Claudio Grossman, Dean of American University’s Washington College of Law and the Raymond Geraldson Scholar for International and Humanitarian Law; and Juan Enrique Vargas, Executive Director of CEJA.
Linn Hammergren’s recommendations centered around resolving the difference between the supply and demand of criminal justice systems in Latin America. She explained that a country must first gather and use accurate qualitative data in order to set realistic goals. These realistic goals must take into account that there must be trade-offs in that in order to make a system more efficient, it is going to require more initial investment. She summed up her recommendations by commenting that while new systems have been more independent, they have not been more accountable, which is leaving the door open for the executive branch to take over.

Claudio Grossman proposed that the value of the state governance has to be transformed, as it was in the judicial reform policies of Chile starting in the late 1990’s, focusing on the need for political will and internal efforts. He emphasized that initial domestic efforts must be bolstered by a greater international effort. Finally, Grossman stated that the academia needs to take a more active role in reform because it “is a process of thinking and rethinking issues.”

Douglas Cassell centered his conclusions and recommendations on the fact that the judiciary is bigger than simply justices alone. Cassell stated that the goals of a criminal justice system are to decrease the level of violent crime, to guarantee punishment for the guilty, to be free of wrongful imprisonment and to be honest and non-corrupt in their dealings. He agreed that the system must be analyzed as a whole from top to bottom on both a micro and macro level. Cassell closed by stating that an efficient judicial reform would first ask, “What is it that we need to do to meet the demands of the people?”

Juan Enrique Vargas concluded the conference by commenting that one of the key problems with new reforms is that citizens maintain high expectations for the courts while a lack of judicial institutionalism prevents these hopes from being realized. He also notes that a lack of political will cause progress to cease. To avoid this failure, Vargas recommends the utilization of the media in order to create political will. Another shortcoming of judicial reform is the lack of technical knowledge and funding for the implementation of a new system, which would entail retraining and administrative costs. He closed by expressing the importance of follow-ups and evaluations to create an evolving system that would be the key to reform.