

RAPORTEURS' REPORT
CHALLENGES TO DEMOCRACY IN THE AMERICAS
A Carter Center Conference
October 8-10, 2000

SUMMARY OF THE WORKING GROUP RECOMMENDATIONS

In October 2000 The Carter Center's Latin American and Caribbean Program convened a conference on *Challenges to Democracy in the Americas*. The 100 participants included seven former presidents from the Americas, as well as influential policy makers, scholars, civil society leaders, private sector representatives and members of the media. The group met in plenary sessions on the scope of the challenges facing democracy and hemispheric responses to those challenges. They then broke into working groups to give close consideration to policy options at three levels – civil society, the state, and the international system – always bearing in mind the overall theme of the conference, which was “improving accountability”.

The working groups were arrayed around five challenges to democracy:

Group A: Ensuring public security

Group B: Strengthening accountability in the armed forces

Group C: Empowering citizen participation

Group D: Moderating executive power through institutional balances and decentralization

Group E: Achieving effective representation

What follows is a summary of the comments recorded by rapporteurs in each of the working groups, as well as the policy recommendations that each group made. Each group's section begins with their “charge”, a short description of some dilemmas raised in the set of papers commissioned to inform the conference. This provided a starting point for discussion. The general themes raised in each group are then noted, followed by their policy recommendations.

Group A: Ensuring Public Security.

The “Charge”: Rising crime rates and lack of physical safety top the list of citizen concerns in polls across the hemisphere. We know that there are many sources of citizen insecurity, including economic deprivation leading to crime, undertrained and underpaid police forces, international criminal gangs and drug rings, the growth of unaccountable private security forces, and paramilitary and insurgent groups seeking financial resources through kidnapping and robbery. Manuel Antonio Garreton notes that human rights concerns about physical integrity have been reformulated under democracy to focus on protection from criminal, urban, and familial violence.

This working group will discuss how to reduce criminality while protecting human rights. Regulating private security forces, obtaining oversight of intelligence services, eliminating paramilitary forces, community policing, and controlling the flow of weapons might also help to improve citizen security.

The Group Discussion: Public security is best assured through prevention rather than repression or punishment for crimes. Security does not imply social or political control; on the contrary, security begins with individual rights. Accountability of police forces is essential in order to foster and maintain public trust in police forces. Military and police structures and missions should be kept separate. International actors should reward and assist countries making a good faith effort to improve policing, and should build police capacity in each country rather than simply criticizing or substituting international for domestic law enforcement mechanisms.

- ✓ Community policing in a variety of forms is the best strategy for building public trust in police forces.
- ✓ Police training is essential to assure that police forces have the capacity to work effectively and efficiently, and in keeping with a community policing approach and respect for human rights.
- ✓ Technology takes time to develop but it is important to begin now in order to overcome the “science gap” by increasing forensic capability and constructing modern crime labs.
- ✓ Legal reforms ought to be made in order to develop oversight mechanisms for both police and intelligence services.
- ✓ The right of a free press should not be abridged in police matters, as the press provides a valuable mechanism for public feedback and can help build the community trust needed for the public to report crime.
- ✓ A human rights ombudsman’s office can provide a neutral force to which the public can report crime without fear of abuse, and can also help provide citizen

oversight of policing functions, including annual report cards. Empowering the human rights ombudsman to veto the appointment of police inspector generals can help build public trust in police.

- ✓ Professionalization of the police forces, including provision of adequate resources to conduct police work well, can help prevent the exodus of the best police officers to private security posts which tend to pay more.
- ✓ Regulation of private security forces is needed to assure they do not become involved in crime or otherwise sacrifice the public trust to private interests. Regulations should call for registration of arms, maintenance of records listing private security officers, and thorough background checks on all applicants for security force work.

Group B: Strengthening Accountability in the Armed Forces.

The “Charge”: How can we move from a situation of governments being subject to military oversight, to the reverse? Glenn Weidner argues in his paper that the perceived inefficiency and corruption of many civilian governmental bureaucracies leads to military participation in decision-making areas that have little to do with national defense. This “encroachment” on government decision-making is sometimes encouraged by constitutions that permit military missions in internal security and national development as well as the narrower realm of national defense.

Military autonomy is further enhanced by direct access to revenues from military businesses or from entitlements to extractive commodities, such as oil and copper. Where armed forces rely less on government budgets for current expenses, arms purchases and pensions, oversight groups lack the “teeth” of controlling purse strings. The report from the Global Forum on Fighting Corruption in this book includes recommendations to improve accountability and reduce corruption in national security forces through better accountability, training, recruitment, and ethical leadership. International efforts range from confidence-building measures and armaments reporting to the United Nations, to strengthening the Inter-American Defense System.

Another recurring dilemma, highlighted dramatically this week by the case of Peru’s Montesinos, is how to balance the demand for prosecution of human rights abuses and justice with the need to remove non-democratic elements and move forward toward reconciliation (through amnesty or asylum offers). Garreton suggests that reconciliation after human rights abuses requires that both abusers and abused recognize they are part of the same society, and that the armed forces must admit their responsibility. The working group may also want to consider the implications of the emerging International Criminal Court and the growing legal basis for countries to prosecute human rights abusers outside of their territory.

The Discussion: Strengthening the military within democracies can strengthen democratic governments and deepen military subordination to civilian rule. Old dilemmas persist, such as whether amnesties are sometimes necessary for political stability or simply invite impunity and encourage human rights abuses. New circumstances introduce new dilemmas, such as whether to insist ordinary crimes be tried in civilian courts given that new overseas deployments give rise to situations where ordinary jurisdiction may be called into question by the nature and location of the faults committed. Nonetheless, civilians and military officers from around the region agreed on a number of steps to advance civil-military relations within democracies.

- ✓ The president or prime minister should have the right to designate and remove senior military commanders.
- ✓ The legislature should provide checks and balances by allocating the military budget and monitoring its execution.

- ✓ A legislative defense commission should provide oversight of military promotions and defense activities.
- ✓ The role of the armed forces should be restricted to national defense and security. Public order is the responsibility of civilian police forces, and any use of the military to ensure public order should be limited to extraordinary circumstances and subjected to a clear legal framework established in advance and under the control of civilian authorities.
- ✓ A civilian minister of defense can better manage controversies and build consensus around defense policies, and can be replaced without damaging the chain of command, so is therefore recommended.
- ✓ Civilian expertise in defense matters ought to be developed.
- ✓ Arms procurement should be subject to standards set forth in the United Nations conventions on corrupt practices. The confidence building measures sponsored by the Organization of American States can help assure transparency.
- ✓ The military's role in national industry is prejudicial because it leads officers to become economic pressure groups, and armed forces should therefore divest themselves of private businesses.
- ✓ Financial resources of the military should spring from budgetary allocations that permit oversight and exercise of the power of the purse, and therefore armed forces should not benefit from entitlements accrued from exports, such as the copper revenues in Chile or the oil revenues in Ecuador.

Group C: Empowering Citizen Participation.

The “Charge”: Manuel Antonio Garreton and Philip Oxhorn point out the importance of strengthening citizen participation and efficacy in order to strengthen democracy. We have noted with concern the growing skepticism among citizens in the hemisphere about whether their governments adequately express the will of the people and whether politicians serve their constituents. Even as public support for the principles of democracy remains strong in most countries, dissatisfaction with performance is high.

A group of scholars in Costa Rica carried out a fascinating study to measure citizen attitudes toward Costa Rican democracy and made recommendations described in the paper by Jorge Vargas. A similar Citizen’s Audit is being started this fall in Argentina.

Strengthening civil society organizations might be achieved by providing training and financial assistance (from the state or from international organizations); by rededicating the strong human rights networks from the authoritarian periods to focus now on the defense and promotion of civil rights in democratic regimes; and by providing tax deductibility for charitable deductions so that domestic sources of financing could replace external dependencies. Accountability might be achieved by greater transparency of finances and decision-making within civil society organizations.

More effective citizen participation can also be enhanced through more accessible legislative processes, at the same time that legislatures are given more autonomy in policymaking and ensuring accountability. For previously excluded groups, explicit mechanisms for political participation, such as legislative quotas or executive councils, might replace more destructive mobilizational tactics. Devolving power to local governments provides more opportunity for citizen participation. Finally, Oxhorn suggests that media campaigns to reinforce positive images of disadvantaged groups and minorities will contribute to both greater respect for pluralism and greater self-esteem, a prerequisite for successful integration of such groups into the political system.

Transparency and citizen participation also require freedom of expression and freedom of information. The time may be right for a new hemispheric norm on freedom of expression and information that are vital for democracy. Finally, involving the private sector in the democratic enterprise is crucial. Corporate responsibility can contribute to transparent government-business transactions, while tax reform to encourage philanthropy can help develop citizen participation.

The Discussion: Empowering citizen participation via access to information and strengthening of civil society organizations is intricately linked to the demand for accountability, including not only citizen efforts to hold governments accountable but also citizens’ obligation to run civil society organizations (CSOs) in transparent ways. Working group participants were troubled by a perceived government backlash against civil society, which mushroomed in the transition to democracy, but also by the existence of civil society groups that are vehicles for personal power or were created by

government to act as a counterweight to authentic CSOs. A related concern was whether the existence of strong CSOs that aggregate and express interests has undercut political party systems or acted to rival local governments and undermine decentralization. The group nonetheless felt any attempt to regulate CSO formation, or to register and track CSOs, would squelch potentially valuable organizational efforts and invite curtailment of civil liberties. They urged that regional norms emphasize disclosure rather than regulation.

- ✓ Governments should be encouraged to engage in meaningful consultation with civil society via non-governmental organizations, the private sector, religious organizations and other groups.
- ✓ The Free Trade Area of the Americas (FTAA) negotiating group on government procurement should promote standards of transparent practice in government procurement.
- ✓ Private sector groups should adopt and enforce corporate codes of conduct. Groups such as The Carter Center's Council for Ethical Business practices can help in fostering training for compliance with ethics codes, and the development of model codes and model implementation procedures.
- ✓ Civil society organizations should submit themselves to the same standards of disclosure and oversight that we demand of the private sector. Codes of conduct should be developed for civil society organizations.
- ✓ Affiliated organizations in each country and internationally should demand transparency of their counterparts, creating a web of peer enforcement. The Organization of American States has developed guidelines for civil society organizations wishing to affiliate with the OAS, indicating that multilateral organizations can join in setting standards.
- ✓ To the extent that legislation is needed to support non-governmental organizations, model NGO laws ought to be developed and disseminated.
- ✓ Laws should be developed to provide for tax deductibility of contributions to non-governmental and charitable organizations so that they can begin to develop funding sources within their countries and be less dependent on external financing.
- ✓ States should develop access to information laws to increase accountability in governance. As far as possible, public information should be made available via the internet.
- ✓ "Insult laws" should be repealed.

- ✓ Libel laws need reform in many countries, as they often carry disproportionately heavy sentences.
- ✓ The OAS Declaration on Freedom of Expression in the Americas is a step in the right direction and deserves support, though some participants were concerned about the wording of select passages in the text.
- ✓ Repression and murder of journalists is unacceptable at any time in any country, and the international community should make it clear that such activity will carry consequences for countries where impunity exists for such crimes.

Group D: Moderating Executive Power through Institutional Balances and Decentralization.

The “Charge”: A growing concern has been the concentration of power in the executive branch in a region already noted for its historic tendency of presidentialism. Strengthening legislatures and depoliticizing judiciaries are crucial to providing accountability through institutional checks and balances in presidential systems. In parliamentary systems, greater openness of the legislative process and electoral reform may help to check concentration of power where one party dominates.

Matt Shugart suggests that a more efficient policy-making process that can solve national problems requires legislative branches that are a partner in the process, rather than an obstacle, and that reflect the preferences of the national electorate. Recent constitutional changes in Ecuador, Peru and Venezuela were born of executive-legislative conflicts that are in reality failures of representation. Therefore, he argues, rather than changing constitutions as a panacea, countries should be focusing instead on electoral reforms.

Moderating executive power can also be accomplished through other forms of accountability, including greater transparency and oversight through administrative investigation and audits, responsible fiscal decentralization matching new responsibilities with increased revenue-raising authority of local governments, and countering impunity through judicial and administrative means.

The Discussion: Decentralization of power and the development of checks and balances are essential to accountability and democracy. More needs to be done between elections to encourage horizontal accountability. This is primarily the responsibility of nationals, though international actors can help.

- ✓ Democracy clauses, which limit participation in international covenants and organizations to those countries which are democratic, are useful in reinforcing the regional norm of democratic governance.
- ✓ Transparency in public spending is essential to check abuse of power and illicit enrichment, and can be achieved through a variety of best practices that should be developed as standard operating procedures. An accountability report card focused on public spending will help enforce good practice.
- ✓ The technology exists to enforce transparency, and governments should invest in it since transparency pays for itself. Examples include x-ray machines for customs offices, databases for the civil service and for public contracting, and the development of sophisticated crime labs and white collar crime units.
- ✓ Civic control mechanisms, such as citizen watchdog groups, involve the community in assuring government transparency. They can make decentralization

- work better if they cooperate with local governments rather than rivaling their authority.
- ✓ Freedom of the press, including better libel laws, repeal of insult laws, and the right of reply, can help provide accountability.
 - ✓ A professional career training track for public administration can improve government management and develop a meritocracy in the civil service.
 - ✓ Anticorruption commissions can help prevent corruption through public education and investigation of alleged corrupt acts.
 - ✓ Educational initiatives can help combat the culture of permissiveness that underlies corruption and impunity, and thereby will strengthen the rule of law.
 - ✓ Privatization of certain agencies and functions can contribute to transparency.
 - ✓ Political parties ought to democratize their internal procedures and make them transparent.
 - ✓ Protection of whistleblowers is essential for inviting citizens in government to preserve the public trust above their individual interests.
 - ✓ Analysis of government delivery of goods and services, including the studies conducted by the World Bank Institute, can help countries determine which government agencies are effective and which ones require reform to become transparent.
 - ✓ The use of “concurso” to select government officials, wherein the credentials of candidates for the post are made public and are openly discussed by legislators and others involved in the selection process, can help build a meritocracy in civil service.
 - ✓ Strengthening the reporting capacity of government institutions and the standards for reports on public projects can help prevent the repetition of mistakes and make government more effective.
 - ✓ Testing of judges and replacement of those who do not meet minimal standards of understanding of the law can help build a judicial branch that is more professional, less corrupt and better respected.
 - ✓ The Organization of American States will recommend a mechanism for monitoring compliance with the Inter-American Convention Against Corruption, and that mechanism should be embraced by regional leaders at the Summit of the Americas.

- ✓ Support for the OAS Justice Center should be broadened so that this new agency can begin to strengthen the judicial branch throughout the hemisphere.
- ✓ Fixed and staggered terms for members of the central bank, caps on the percent of members from the president's party, limits on the powers of the superintendent of banks and other mechanisms for assuring the independence of the central bank from both government and private sector interests are essential.
- ✓ Illicit enrichment laws and their implementation, including disclosure requirements before and after taking office, will help assure that government officials do not abuse their office for personal gain.
- ✓ Decentralization should include town hall meetings for approval of the municipal budget.
- ✓ Development of professional organizations, peer review mechanisms, norms and codes of conduct can increase the professionalism of lawyers and journalists, both key groups in assuring accountability.
- ✓ Constitutional reforms should not go into effect until the end of the current president or prime minister's term in order to assure that constitutions are not manipulated for short-term political gain.

Group E: Effective Representation.

The “Charge”: Failed party systems and new populist leaders lead Matt Shugart and Ken Roberts to call for electoral reforms in their papers. Garretton notes that the traditional mobilization politics of Latin America has not been replaced by a new representational politics. Shugart calls for a representation revolution to bring more accountability of leaders to voters and to make more efficient policy-making that is responsive to voters. Roberts notes that populists win elections when large sectors of the lower classes are available for political mobilization but are not effectively represented by established parties. But populists are not necessarily more democratic; instead, they are often delegated authority by their supporters and they tend to concentrate power, ignore minority rights, and clash with legislatures.

The collapse of traditional party systems in Peru and Venezuela, and the fragmented party systems of Brazil and Ecuador are cause for concern. The dilemma is how to balance the trade-off between representation of minority interests (through multi-party systems and proportional representation) and governability (achieving majority coalitions, often through single-member districts). Recommended reforms include democratizing political parties through internal party elections for leaders and candidates; mixed electoral systems of proportional representation and single-member districts; and campaign finance reform to bring more transparency and help level the playing field.

Finally, the failed and questioned elections of this past year point out the need for independent, high-capacity and professional electoral authorities. The failed elections further raise the question of the appropriate hemispheric responses when this most basic of democratic institutions is manipulated for partisan benefit and the will of the people is ignored.

The Discussion: Effective representation requires free and fair elections, but also internal party democracy. No single party or electoral system is best – there are many combinations that work. Some countries hold primaries, but elsewhere primaries are divisive, weakening party structures and appealing to personalist rivalries, and even reducing governability after the election. Campaign finance needs regulation, but it is not clear how to allocate public funds without introducing undue bias against new parties seeking to enter the political arena. While diversity in terms of gender and ethnicity among party leaders and candidates was thought to be desirable, there was no agreement among working group participants on how to achieve such diversity. Re-election can devolve into *continuismo*, but can also provide incentives for accountability to the electorate. Despite the broad range of views expressed, participants agreed that the region can go further than it has to date in supporting democratic practice through international organizations and within countries.

- ✓ OAS Resolution 1080 should be interpreted such that elections that do not meet international standards will be considered an irregular interruption of the democratic process.
- ✓ Elections should be declared inadequately democratic where there is a high degree of intimidation or physical coercion, where one party or candidate has vastly superior control of resources employed in the campaign, or where candidates do not have the opportunity to get their message out to the voting public.
- ✓ International observers remain important for supporting democracy. They should be invited, arrive well in advance of elections, be well trained, obey international norms for observation, and be neutral. Their goal should be to promote good elections, not condemn bad ones. This will normally be enhanced by issuance of periodic public reports on the electoral process.
- ✓ Domestic observers are increasingly professional and can make important contributions to the development of good elections, and thus they often merit international support, though they are sometime perceived as partisan.
- ✓ The FTAA should contain a democracy clause such that only democratic countries are admitted to membership.