

Association of American Chambers of Commerce in Latin America (AACCLA), “Forecast on Latin America and the Caribbean” Conference

William Hubbard
Chairman, Board of Directors
The World Justice Project

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U.S. Chamber of Commerce

Opening

Good afternoon. It is a great privilege to be with you today. I especially thank Mr. Patrick Kilbride for the invitation to join you. I thank each of you for your attendance and interest in learning about the World Justice Project, a transformative global initiative.

The World Justice Project encompasses many disciplines: business, medicine, engineering, education, journalism, the arts. It is not just about lawyers and judges.

The World Justice Project is based on the scholarship of brilliant researchers and scholars from around the globe including two Nobel laureates.

The World Justice Project has developed and continues to refine a Rule of Law Index for countries across the globe. The Rule of Law Index is not a tool for blame or shame, but instead is designed to be a means by which countries and leaders have vital data, on which to develop plans of action for positive change.

At the very core of the World Justice Project is the belief that the Rule of Law matters to all of us. It is the Rule of Law which undergirds commerce, energy, education, architecture, journalism, the arts, and health.

Consider the schools your children attend and the playgrounds on which they play. Consider the buses and cars which transport them daily. Imagine these schools, playgrounds and buses if there were no rules or laws protecting the construction of these facilities and the manufacture of these vehicles.

Or consider the bridges, roads or runways you traverse daily-or the offices and buildings in which you live, work and recreate. What if there were no building codes governing their design, the materials used, or safety features.

Or imagine a world in which corporations were unable to locate plants and facilities in areas rich with natural resources and willing workers because the basic safety of managers, workers, and their families were in peril because of drug cartels and corrupt public safety officials.

Do we have to imagine this world? Have you as corporate leaders not already seen evidence of corruption and unfettered greed compromising the delivery systems and infrastructures we rely on? You have seen those same forces compromise the production and delivery of medicine and medical equipment, and free access to information and free inquiry.

The World Justice Project imagines a better world. Our successful multidisciplinary approach has led to real projects that improve the environment and public health in Madagascar, maintain food security in Nigeria, secure land rights for farmers in Haiti, advance the well-being of migrant workers in China, and reduce corruption in construction projects among engineers in Tunisia.

The balance of my presentation today consists of three parts. The first is an overview of the World Justice Project (WJP). The second is a brief discussion about the WJP's Rule of Law Index and its findings as related to Latin America. I will conclude by sharing some highlights about our recent regional conference, held in Lima, Peru, last month, and our ongoing programs in Latin America.

About the WJP

The World Justice Project was founded in 2007 by Mr. William Neukom, the former General Counsel of Microsoft. It was incubated by the American Bar association and is now an independent, non-profit organization headquartered in Washington DC. Bill Neukom is the President and CEO of the WJP.

Mission: The WJP is a multinational and multidisciplinary effort to strengthen the rule of law throughout the world to build communities of opportunity and equity. It is based on two complementary premises: first, the rule of law is the foundation for communities of opportunity and equity; and second, multidisciplinary collaboration is the most effective way to advance the rule of law.

A worldwide rule of law deficit undermines efforts to make societies safe, lift people from poverty and build economic prosperity, reduce corruption, improve public health, and enhance education. The WJP is unique in its engagement of stakeholders from a variety of disciplines, and is building an active network of leaders from 17 disciplinary fields including business, public health, journalism, engineering, architecture and education. The WJP is tapping into a broad recognition that the rule of law is essential to thriving communities and to the success of virtually all fields of endeavor.

Definition of the Rule of Law: The WJP uses a working definition of the rule of law based on four universal principles: 1) The government and its officials and agents are accountable under the law; 2) The laws are clear, publicized, stable and fair, and protect fundamental rights, including the security of persons and property; 3) The process by which the laws are enacted, administered, and enforced is accessible, fair and efficient; and 4) Access to justice is provided by competent, independent, and ethical adjudicators, attorneys or representatives and judicial officers who are of sufficient number, have adequate resources, and reflect the makeup of the communities they serve.

Programs: Our work consists of three complementary and mutually reinforcing program areas: Mainstreaming, Rule of Law Index, and Scholarship.

Mainstreaming: The WJP is integrating Rule of Law advancement into the work of a wide range of disciplines. The WJP engages in mainstreaming both by convening action-oriented multidisciplinary meetings (in the US and internationally) on the rule of law, and by providing funding through its Opportunity Fund to non-governmental organizations and other entities for multidisciplinary efforts to strengthen the rule of law. Both of these program areas produce multidisciplinary actions to strengthen the rule of law in communities and regions around the world.

Rule of Law Index: The WJP's Rule of Law Index is a new tool developed and administered by the WJP to measure a country's adherence to the rule of law and to identify areas where a country's rule of law needs improvement. This is the first index to cover the rule of law comprehensively. I will discuss in more detail in a moment, the Rule of Law Index and how it relates to Latin America.

Scholarship: The WJP supports rigorous scholarship, examining the contributions of the rule of law to various aspects of economic, political and social development, and shedding new light on how to strengthen the rule of law. The WJP is sponsoring new research and is disseminating such research for wide public discussion.

Governance: The WJP is governed by a Board of Directors, including the Honorable Justice Ellen G. Northfleet who served as the Chief Justice of the Federal Supreme Court of Brazil; and guided by a group of Honorary Chairs, including Mr. Hernando de Soto, Economist, and Chairman of the Institute for Liberty and Democracy in Peru.

Funding: The WJP's leading financial contributors are independent foundations, multinational corporations, and professional firms including law firms. The WJP takes great pride in its diverse and balanced sources of financial support, which includes funding from the Bill & Melinda Gates

Foundation, GE Foundation, Microsoft, Walmart, Hewlett-Packard, Merck, LexisNexis, and the Neukom Family Foundation.

I. The WJP Rule of Law Index and Latin America

Introduction: The WJP's Rule of Law Index, which I would like to discuss in greater detail now, is a new tool developed and administered by the WJP to measure a country's adherence to the rule of law. The Index is designed to provide governments, businesses, NGO's, and civil society, with a tool to:

- Assess a nation's adherence to the rule of law in practice;
- Identify a nation's strengths and weaknesses in comparison to similarly situated countries;
- Track changes over time.

The *Index* provides a comprehensive set of new indicators on the following ten dimensions of the rule of law:

- Limited government powers
- Absence of corruption
- Clear, publicized and stable laws
- Order and security
- Fundamental rights
- Open government
- Regulatory enforcement
- Access to civil justice
- Effective criminal justice
- Informal justice

These ten factors are further disaggregated into 49 sub-factors. The scores of these sub-factors are built from over 700 variables drawn from assessments of the general public (at least 1,000 respondents per country) and local legal experts. The outcome of this exercise is one of the world's most comprehensive data sets measuring the extent to which countries adhere to the rule of law in practice.

The 2010 *Index* covers 35 countries, including seven in Latin America—Argentina, Bolivia, Colombia, Dominican Republic, El Salvador, Mexico, and Peru. It will expand to 70 countries by 2011 and 100 countries by 2012.

The *Index's* scores are the product of a rigorous data collection and aggregation process. Data comes from a global poll of the general public and detailed questionnaires administered to local legal experts. To date, over 35,000 regular citizens and 900 experts from around the world have participated. The current Rule of Law Index, Index version 3.0, will be released on October 14, at the National Press Club here in Washington D.C.

Regional Context in Latin America:

Let me now move on and address why the rule of law matters to the business community in Latin America. Just as in any part of the world, establishing and maintaining effective rule of law is critical if Latin American businesses, as well as Latin American societies, are to reach their full potential. Without the rule of law, medicines do not reach health facilities; people are killed in criminal violence; firms' costs increase because of expropriation risk; and contracts cannot be effectively enforced. The rule of law is the cornerstone to improving public health, ensuring security, increasing investment, and sparking economic growth.

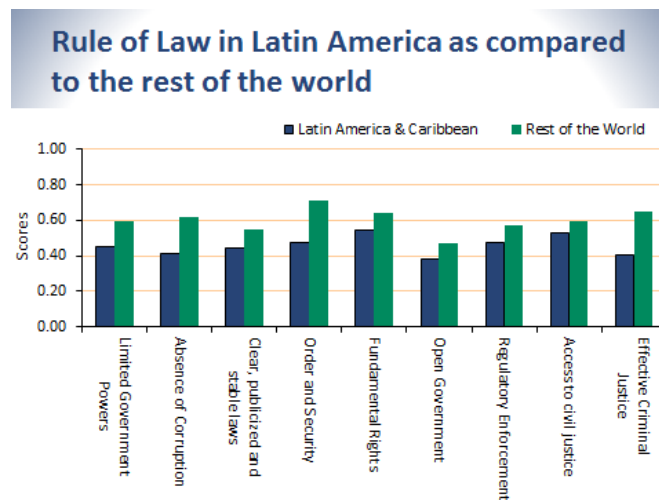
Businesses have been at the forefront of Latin America's current era of democratization and increased integration into the global economy. Adherence to fair and effective Rule of Law will contribute significantly to the success or failure of Latin America's policies as the region moves deeper into the 21st century.

What are the current Rule of Law challenges affecting the business community in Latin America? How can businesses advance and help to maintain the rule of law? These are the questions at the heart of our discussion today.

First, we should note that, as an extremely diverse region, Latin America has a wide range of economic and business environments. As you already know, the challenges facing Mexico and Central America are very different from those facing countries in the Andean region and the Southern Cone. This being the case, there are still many shared challenges for businesses and investors to promote effective Rule of Law across the region as a whole.

In what follows, I will use the Rule of Law Index as a guiding tool to highlight some of these shared challenges. Before I discuss the details, let's look at the issue from a broader perspective. The following chart compares, for the nine factors measured by the Rule of Law Index, the average scores of the Latin America and Caribbean countries with the other indexed countries.

Figure 1: Rule of Law in Latin America as compared to the rest of the world



As the table suggests, while many countries in the region stand out among developing nations across the globe in protecting freedom of thought, most Latin American countries underperform in comparison to other regions on several dimensions. Today, I will focus on three of these dimensions which, in my opinion, represent significant challenges to the business community in Latin America today: (1) Government Accountability (including corruption), (2) Security, and (3) Dispute Resolution.

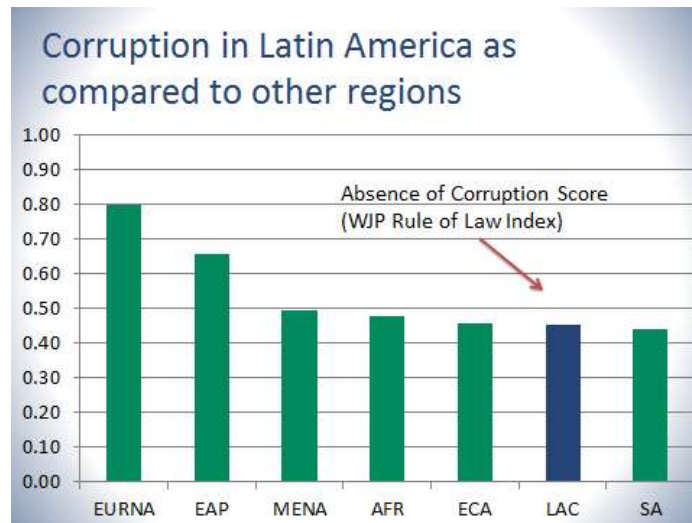
Government Accountability: Historically, in many Latin American countries, expansions of government power, without checks or limits from the legislature or the judiciary, have proven to be an impediment to sustained business growth. We all know that lack of effective checks and balances within the government affects economic activity, reduces investment, obstructs competition, and generates social tensions. Unfortunately, this challenge currently exists in several countries of the region. Latin America ranks low compared to other indexed countries, for instance, in terms of effective limits by the judiciary on the exercise of the executive power. While there is a wide variance between countries in the region, some countries still face the challenge of improving the mechanisms of government accountability to society. For societies to succeed, it is essential that everyone be held accountable under the law.

Table 1: Government accountability in Latin America

Government accountability in Latin America:	
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Limited government powers	
Factor 1.3: Government powers are effectively limited by the judiciary	Global Ranking
Colombia	14/35
El Salvador	17/35
Mexico	21/35
Peru	23/35
Dominican Republic	27/35
Argentina	31/35
Bolivia	34/35

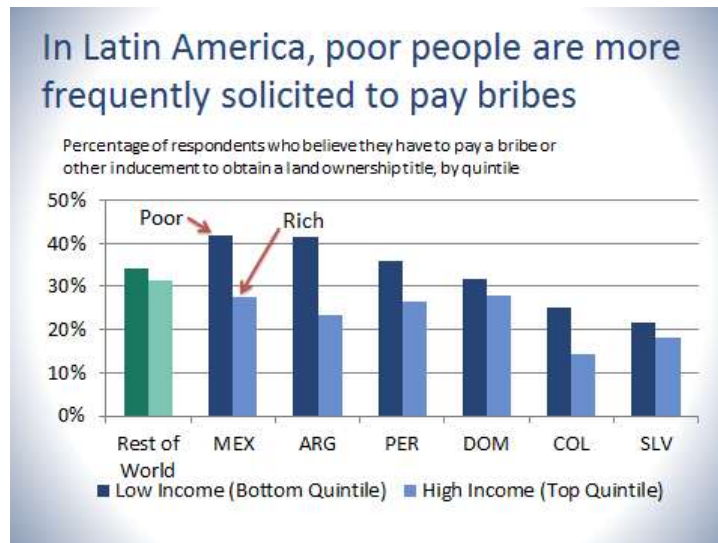
Another key dimension of accountability is corruption, which unfortunately remains prevalent in the region. Latin America, as a whole, scores well below most other regions in the world in the Corruption factor of the Rule of Law Index, which means that government officials, including members of the executive, judiciary, and the police, routinely accept bribes and exercise improper influence.

Figure 2: Corruption in Latin America as compared to other regions



Corruption results in the unequal provision of services, hinders economic development, erodes the institutional capacity of the government, and disproportionately affects vulnerable groups.

Figure 3: In Latin America, poor people are more frequently solicited to pay bribes



Let me elaborate in this last point. As the table shows, the percentage of low-income people who state they have to pay a bribe or other inducement to obtain a land ownership title is significantly higher when compared to higher income respondents. In countries such as Mexico, Argentina, and

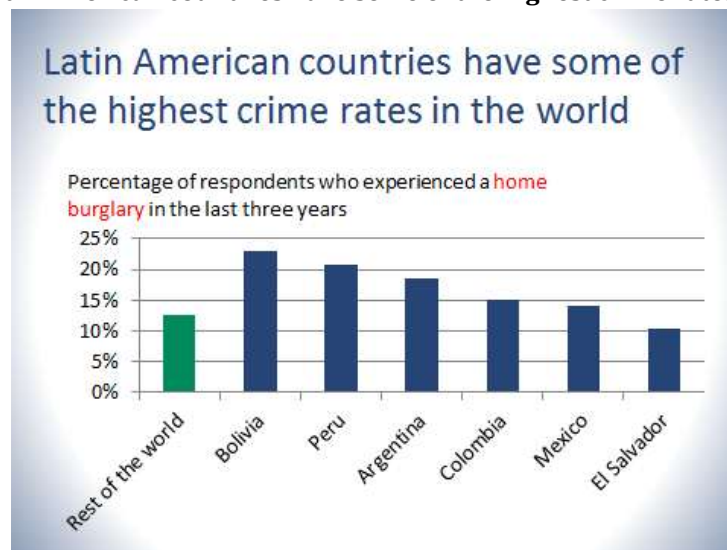
Peru, lower income populations are extorted by corrupt officers at a much higher rate than higher income populations in these countries.

Both the public and private sectors have important roles to play in fighting corruption and promoting transparency. To this end, business leaders in Latin America should champion their desire to eliminate bribery and participate in public policy reforms. In the end, we all want to benefit equally from business opportunities and play by the same rules.

Security: A second area of concern in the region is security. A lack of order and security represents a significant challenge to business growth in many countries. It is well known that crime reduces investment returns and drives customers away from the market place. This has a direct impact on businesses of all sizes as concerns over the safety of employees, capital, and customers raise costs and reduce demand.

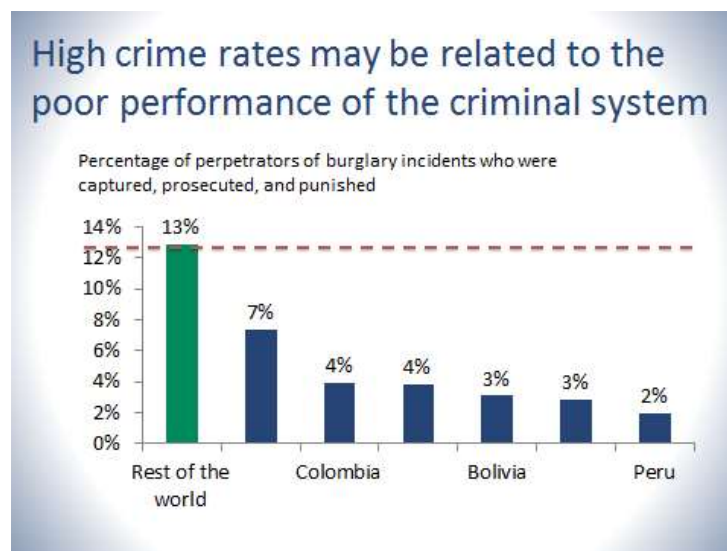
While drug trafficking problems flood the media headlines, for the lay citizen and local business communities there are other safety concerns. Latin America exhibits some of the highest crime rates in the world. The following graph shows, for example, the percentage of respondents who experienced a home burglary in the last three years. As the graph reveals, Mexico, Colombia, Argentina, Peru and Bolivia all perform poorly in this regard compared to the average of other indexed countries.

Figure 4: Latin American countries have some of the highest crime rates in the world



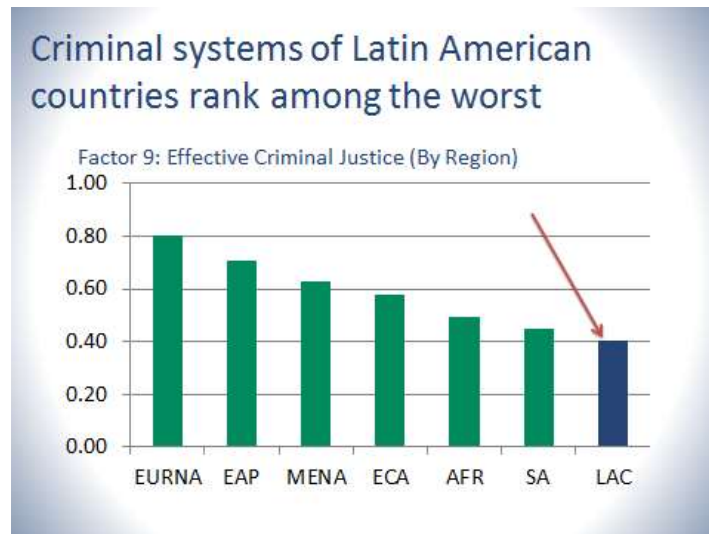
The high crime rates in the region may be related to the generally poor performance of the criminal investigation and adjudication systems (police investigators, prosecutors and judges). Indeed, the criminal justice systems of most Latin American countries rank among the least effective in the world. The following graph shows the percentage of perpetrators of the burglary incidents, who were captured, prosecuted, and punished. In most countries in the region, more than 95% of the perpetrators were not punished.

Figure 5: High crime rates may be related to the poor performance of the criminal justice system



On top of deficient criminal investigation and adjudication systems, improper influences in judicial proceedings are common in the region. Once we take all these factors into account, Latin America ranks behind every other indexed region in the world when it comes to criminal justice.

Figure 6: Criminal Justice systems of Latin American countries rank among the worst



Dispute Resolution: The last dimension I would like to mention is dispute resolution, a component of the factor “Access to Civil Justice”. I don’t need to tell you how important judicial dispute resolution mechanisms are in providing a sound and effective institutional framework for private sector development. What is equally important, however, is that these mechanisms be affordable, effective, impartial, and efficient. Latin America falls within the middle rankings in the Access to Civil Justice factor of the Index. In fact, it performs well in terms of access to legal counsel and representation. However, it still needs to eliminate deficiencies in terms of access to justice, particularly in the areas of court congestion and delays in processing cases. As the last graph makes clear, most users of civil courts feel that processes are slow.

Table 2: Dispute Resolution in Latin America

Dispute Resolution in Latin America

During the past three years, have you or someone in your household had a conflict with someone who refused to fulfill a contract or pay a debt? Which one of the following mechanisms was used to solve the conflict?

	Argentina	Bolivia	Colombia	El Salvador	Mexico	Peru
Filed a lawsuit in court	38%	28%	30%	42%	35%	33%
For those who filed a lawsuit in court						
Was the process fair ? (Yes)	40%	40%	59%	34%	48%	54%
Was the process too slow ? (Yes)	85%	89%	85%	88%	76%	96%
Was the process too expensive? (Yes)	56%	80%	48%	40%	60%	84%

Just as in many regions, Latin America faces many challenges in advancing the rule of law. We at the WJP believe that the most effective way to advance the Rule of Law is through multidisciplinary collaboration.

Current WJP Programs in Latin America

In addition to conducting Rule of Law Index, the WJP has hosted two regional Rule of Law conferences in Latin America, in Buenos Aires and Lima, and welcomed a significant number of participants from Latin America at the World Justice Forum I and II in Vienna. As a concrete outcome of these conferences, the WJP also supports through its Opportunity Fund a number of multidisciplinary Rule of Law projects on the community-level in Latin America.

Just three weeks ago, the WJP held its second major Rule of Law conference in Latin America in Lima. The conference was attended by over 100 multidisciplinary leaders from 24 countries in Latin America and the Caribbean, including corporate leaders from major corporations, such as General Electric, Hewlett-Packard, and Microsoft. The main themes at the conference were Public Security, Government Accountability, and

Balancing Economic Development and the Environment—all themes that impact the region's business community. I would like to note that the most well-attended breakout session at the conference was titled *Educating Social Entrepreneurs to Address the Rule of Law*. This speaks to the influence and responsibility of the business community in shaping the rule of law in Latin America.

Let me highlight a number of WJP-supported Rule of Law projects on the community level in the region:

In Argentina, we are providing small grants to support the education of students about the rule of law and to increase access to information and women's health rights. In Peru, we are providing grant support to increase access to information about environmental law compliance. In Mexico, we are supporting the protection of indigenous workers' rights. In Haiti, we are assisting the stabilization of title to land holdings of poor farmers.

All of the WJP's programs, whether it is Mainstreaming the Rule of Law, or the Rule of Law Index, or Scholarship, will not have been made possible without the shared commitment and generous support from corporations such as yours. Leading corporations, such as General Electric, Hewlett-Packard, Microsoft, Intel, Wal-Mart, Merck, and many others, have supported the WJP since its founding -- not only through financial contributions but also pro bono contribution of their legal counsel and business managers.

In closing, I want to extend an invitation to you to initiate and continue a close dialogue with the WJP as we work together to advance the rule of law in the region and around the world. We welcome you. By combining the strengths of our many disciplines and professions to promote the rule of law, we can imagine, and indeed, celebrate a better world.