Summary

Changing the Approach to Crime and Violence in Latin America:

Lessons Learned, New Observations, and Emerging Issues[1]

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Across Latin America, the struggle to reduce crime, violence, and insecurity is framed as a debate between two apparently polar opposites. On one side are those who argue that security is best guaranteed through a framework of rights and the strengthening of efficient, legitimate, and modern democracies. On the other are those who maintain that criminality and impunity are fostered by an excess of rights granted to suspects, leaving victims and society unprotected; governments should therefore adopt hardline and even exceptional measures to combat crime. Complicating the debate is that the apparently "easy" solution of increased rates of incarceration, harsher punishments, and greater police presence can itself generate even greater levels of violence, at the same time that medium- and long-term strategies have shown limited results, including for those policies considered to be "best practices."

[1] This summary was written by Christine Zaino, Program Associate, Latin American Program, Woodrow Wilson Center and Program Director Cynthia Arnson. It is based on the report, *Seguridad y Populismo Punitivo en América Latina: Lecciones Corroboradas, Constataciones Novedosas y Temas Emergentes*, by Latin American Program consultants Carlos Basombrío and Lucía Dammert. The full report summarizes the principal findings of a series of regional seminars held in Latin America and Washington, D.C., with the support of the Andean Development Corporation (Corporación Andina de Fomento, CAF). These seminars engaged experts and policy makers from three sub-regions—the Southern Cone, the Andean region, and Central America—in public and private debates over what has often been framed as a debate between security and justice – whether governments should focus on punitive measures to suppress crime or prioritize the strengthening of democratic institutions and respect for human rights. The complete final report, together with the reports on the three regional meetings, are in Spanish and can be found on the Latin American Program's website, http://www.wilsoncenter.org/publication-series/citizen-security. More resources can be found on the Latin American Program Citizen Security blog at http://scela.wordpress.com.

The region faces multiple and diverse security challenges; and the gravity of the situation makes finding more effective crime fighting and violence prevention strategies imperative. In order to address security challenges more effectively, policymakers in Latin America must overcome deeply-held, popular beliefs about crime and security and develop new evidence-based approaches. Doing so requires examining the roots of the conflict between demands for greater security and appeals for rights-based policies. Moreover, policymakers and experts must engage in a serious discussion on the legal, institutional, and political obstacles that inhibit the justice system's ability to fight crime. An objective and comparative analysis of the tensions between those prioritizing security and those favoring a rights-based approach is essential to develop policies that combine effective anti-crime strategies while preserving basic civil rights.

During the project we focused on five critical areas:

(1) **Populist demands for punitive policies.** Security has emerged as a central issue in electoral campaigns, where measures such as the death penalty, harsher punishments, anti-gang laws, the deployment of the armed forces to combat crime, etc., take on special potency. Separating myth from reality and examining the role of the media in exploiting such concerns is imperative.

(2) **Implementation of new criminal procedural codes.** Judicial reforms have been undertaken in at least thirteen Latin American countries. While many reforms have had a positive impact on security, critics have accused the reforms of failing to deliver adequate justice for victims.

(3) **Prosecuting juvenile offenders.** More minors are being incarcerated—and for longer periods of time—than ever before. Most countries of the region have lowered the age at which juveniles can be tried as adults.

(4) **Prison conditions.** The crisis in the region's penitentiary system is alarming as more and more people are sent to prison and for longer periods. There is limited capacity for rehabilitation and reinsertion. Prisons have become new spaces of impunity in which crimes such as extortion are organized from within prison walls.

(5) **Alternatives to incarceration.** Alternative sentencing policies, which could ease the exponential rise in prison overcrowding, have failed to take hold; so far these programs are minimal and lack support from the citizenry or adequate investment from governments.

In order for policymakers in Latin America to overcome outdated, overly punitive approaches to reducing crime and violence, they must confront the *culture of control* as well as populist demands for harsh sentences that have dominated the region for decades. They must examine lessons learned from previous successes and failures and take an evidence-based approach in order to implement effective, efficient, and just public policies in their countries. Most importantly, they must recognize that the debate between greater security and more justice is not necessarily zero sum and that there are opportunities for improvement on both sides.

I. The *Culture of Control* and Populist Demands for Harsh Punishments

The security debate in Latin America is often anchored in a deeply-rooted *culture of control* that seeks to limit crime and violence through mechanisms of state power. In theory, the state controls crime through a combination of public security and judicial policies; that is, through police forces with the legitimate authority to use force, coupled with an effective criminal justice system. The role of the state is to control criminality not only because it is a threat to citizens, but also because it threatens the government's authority and monopoly on the use of force. In seeking to keep crime at a tolerable level, societies develop norms to prohibit behaviors and approve punishment for violations, establish appropriate disciplinary mechanisms, and determine standards and procedures for rehabilitation and reinsertion into society.

The ineffectiveness of the criminal justice system, coupled with popular perceptions that crime and impunity have increased, has intensified public demands for greater control of crime through repressive measures. Justice systems across the region, despite many reform efforts over the last several decades, suffer from three common weaknesses. The first is a conflict between the notion of fair punishment and respect for human rights. What society considers a "just punishment" has varied greatly over the years; recently, sentences have generally grown more severe. A second weakness is that judicial reforms have placed a heavy emphasis on measurable achievements, even if the focus on indicators has not improved the quality of justice. A third weakness is that the effort to include the opinion of citizens in the process of criminal justice has led to a new form of clientelism, bringing concepts of consumer preferences from the private sector into the sphere of public policy design.

The public demand for more punitive policies is based on an assumption that more punishment will result in less crime. The link between public opinion, electoral politics, and security policy is perhaps the most important factor in perpetuating punitive anti-crime policies. Politicians take the position of being tough on crime because it is politically popular and because they fear appearing softer on crime than their opponents. In turn, the fear of appearing "soft on crime" has resulted in a lack of innovation in anti-crime policies. Leaders emphasize the policies that voters favor and appear indifferent to the consequences of these policies.

One effect of punitive populism is that, in contrast to previous decades, specialists and experts have been excluded and marginalized in the design of anti-crime policies. Actual victims of crime and those who feel vulnerable have taken their place, despite a limited knowledge of the complexity of factors that produce criminality and of the process of criminal justice. Subjectivity, not information, knowledge, measurement, and evaluation, drive the public policy agenda. Calls for harsher punishments are focused especially on crimes related to sexual violence and abuse, drug trafficking, and home burglaries. The public is also particularly concerned about crimes involving youth perpetrators and crimes where the victims are women, children, or the elderly. The sense of tragedy is exploited by the media; victims take center stage in a process in which the public identifies with and establishes an emotional link to the victims, turning the fear of victimization into a social phenomenon.

Public policy based on popular opinion rather than evidence-based analysis may not only be ineffective, but may also result in negative, unforeseen consequences. Such policies lead to a

disconnect between public spending and policy outcomes; a complete lack of understanding about the effectiveness of anti-crime policies; severe limitations on judicial discretion at sentencing; the criminalization of certain kinds of youth behavior and school violence; and the stigmatization of criminals.

Overall, several common elements characterize the *culture of control* in Latin America:

(1) Crime is broadly seen as "public enemy Number One;"

(2) In a tendency exacerbated by the period of neoliberalism, crime is seen exclusively as the responsibility of the individual rather than as a product of structural factors or social marginality. A zero-sum perspective holds that concern for the victims of crime is incompatible with any concern for the perpetrators of crime;

(3) Citizens feel they have no choice but to get accustomed to high levels of crime, and live with the constant fear of crime and the need to increase their personal security and reduce the risk of victimization. Concern for human rights and freedoms or for the deeper social phenomena that give rise to crime are minimized or relegated to the background;

(4) Media coverage highlights the negative, is increasingly focused on the most violent crimes, and uses emotional language in reporting;

(5) Crime prevention is broadly understood to consist of stronger police and harsher punishment. Policies devised by conservative governments have been adopted throughout the region by governments of diverse political stripes, diminishing the ideological differences in practice as well as discourse.

II. Characteristics of Crime, Violence, and the State Response in Latin America

Although crime and insecurity are widely viewed as complex and critically important policy issues, there is overall a lack of good information as well as transparency concerning crime data. Crime is a central issue on the public, and therefore political, agenda but becomes especially salient during electoral periods or when the media report on scandals or lurid crimes. Short-term and sensationalized attention does not generate serious analysis or thoughtful consideration over time. Our inquiry served to highlight and at times re-emphasize that:

(1) Criminality in Latin America is diverse in magnitude and overall tendency;

(2) Information that could lead to serious diagnostics is weak, fragmented, and unsystematic;

(3) Policy choices and priorities are not based on solid evidence;

(4) National-level analyses mask important differences within countries (while crime is mostly an urban phenomenon, the link to rural areas has been less explored);

(5) Local governments, with few exceptions, are not empowered to prevent crime. With several notable exceptions (Medellín and Bogotá, for example), policies continue to be dependent on the national government;

(6) The rhetoric of punishment is present throughout the region but more pronounced in northern areas (especially Central America);

(7) Despite political and ideological diversity, concrete anti-crime policies do not fundamentally diverge across the region;

(8) Although the need for prevention policies is widely recognized, there is very little empirical evidence to guide it;

(9) Youth violence is a particular concern but is still poorly understood, particularly with respect to linkages to organized crime;

(10) Institutional analyses are weak, with only limited evaluations of the functioning of criminal justice institutions, the effectiveness of police patrols, etc.;

(11) The prison crisis is broadly acknowledged, including the links between (if not domination of) the prison system and crime and the impossibility of any serious process of rehabilitation under current circumstances.

III. Five Lessons Learned

The three seminars convened as part of this project illustrate the degree to which the discussion about citizen security has gotten more sophisticated, with issues of crime prevention occupying a more and more important place in the regional narrative. The problem of crime in Latin America is recognized as a complex, cross-cutting, and common challenge, and several initiatives at the local level appear promising. The cross-cutting, policy-oriented lessons of our project can be summarized as follows:

(1) **Incarceration and purely punitive responses as a solution to crime have not been successful and have resulted in significant collateral damage.**

A terrified public has demanded hardline policies and sanctions, confusing an effective solution to the problem with a rapid one. Not one Latin American country has shown evidence that imposing harsher penalties through these *mano dura* policies alone has reduced crime. In fact, in

places such as El Salvador, where the policy was implemented with greatest intensity, the results have been negative. Throughout the region the criminal justice system is backlogged. Prisons are overcrowded; the pace of judicial processes is sluggish; police are incapable of carrying out competent investigations in the majority of cases; there is a lack of alternative sentencing programs; and the juvenile justice system is in complete crisis.

(2) **The prison system is the weakest and most abandoned link in the criminal justice system, with numerous and grave consequences.**

Across the region, overcrowding—and the high percentage of prisoners who are held in pre-trial detention (that is, without a formal sentence)—has created a humanitarian crisis of the first order. These conditions receive only sporadic attention, as when there is an explosive outbreak of violence or a scandal regarding institutional corruption. High levels of state corruption also mean that prisons serve as "semi-liberated zones" that foster the continuation of criminal organizations and from which criminal activity on the outside is organized. The crisis of the adult criminal justice system is linked to a marked inability to confront the problem of juvenile justice. Initiatives with juvenile offenders have not been effective and attempts at rehabilitation and reintegration have only been sporadic.

(3) **Prevention of crime and violence has become part of the public policy narrative, but there has not been enough implementation of these policies sufficient to evaluate their effectiveness.**

Given the failure of decades of primarily punitive anti-crime policies, prevention is now part of the wider debate in every country of the region. There is a growing emphasis on situational prevention policies which include the use of geo-referencing for the deployment of police to specific high-crime areas and measures to address drug and alcohol abuse and to limit the circulation of firearms. Less developed, however, are broader social prevention policies that take into account such issues as domestic violence, the quality of education, and the problems of exclusion that leave many without access to the benefits of economic growth.

Prevention is still a long way from being integrated into public policy with the degree of political and budgetary support it deserves. No country has yet implemented prevention policies on a systematic enough basis to permit an analysis of their effectiveness. There is still a significant gap between the articulation of principles related to community policing and restorative justice, for example, and the actual implementation of these programs. The gap generates frustration as well as negative attitudes toward these kinds of efforts.

(4) **Limited government capacity for security policy implementation and management continues throughout the region.**

The overwhelming lack of solid data on crime and violence in Latin America and the reliance on anecdotal information remain a major obstacle to designing policies that result in greater security. Information from the police and judicial sector is not rigorous or reliable. The lack of hard data is primarily due to weak institutional capacity rather than a lack of transparency. Furthermore, the lack of collaboration among institutions and specialists and the lack of a shared

vision have led to finger-pointing and blame shifting, especially between the police and the judiciary but also between municipal and national governments.

The consolidation of modern and professional police departments remains a major challenge. Many police forces still lack the capacity to develop better patrol and citizen engagement strategies and the already high levels of public distrust in the police are rising or at best remaining the same. The inability of the police to control crime, especially in those countries where organized crime is present, has led to the deployment of the armed forces as a political tool to demonstrate that the government is "doing something" about crime.

The constant rotation of senior security officials—ministers of interior or government, for example—has also drawn criticism. These officials become expendable when scandals and corruption cases emerge, but the lack of continuity often makes it more difficult to maintain consistent priorities and properly develop initiatives.

Policies and solutions implemented at the local level have gained ground where regional or sub-regional efforts have proven too slow or impractical. Even when programs are successful, however, public policy appears as a collection of pilot projects or case-specific initiatives, generating widespread skepticism.

(5) **Institutional capacities show their limits when confronting organized crime.**

The public policy responses to crime in Latin America have been episodic, haphazard, and short-term. The political priority has been to address common crime, not more complex forms of organized crime. The relationship between common and organized crime is poorly understood, and government institutions in charge of combatting organized crime (including customs and tax agencies as well as airport police) are poorly trained and equipped. The intelligence capabilities of institutions in charge of combatting organized crime are also limited. Indicators of success have focused on increasing the number of arrests but under scrutiny the cases are appeared more linked to minor crimes.

VI. New Observations

The problem of crime and violence can appear intractable and even at times hopeless; discussions are replete with apocalyptic threats of mafia states or narco-states and the political and social penetration of criminal organizations. Even more than we might have imagined at the outset, this project has uncovered encouraging signs that the situation is not as bleak as it might appear. Despite the ongoing incentives within the political and electoral arena to privilege punitive measures to "fight crime," specialists and decision-makers from throughout the region have reached what we consider to be a point of no return, in which the emphasis is on comprehensive, integrated policies and on alternative sentences. Punitive populism appears more and more as a political and communications tool; its long- and short-term effectiveness is widely viewed as limited, even if an alternative discourse is still lacking.

Across Latin America there is great diversity with respect to the types of crime and the kinds of debates they engender. The presence (or absence) of organized crime and its relationship to the increase in homicides remains a dividing line in the region. Countries in the line of fire—particularly Brazil, Colombia, Mexico, and Central America—have generally adopted harsher narratives and policies. Colombia is an especially interesting case in which the emphasis on evidence-based approaches has become more systematic in recent years. Brazil also merits special attention; there is tremendous diversity in the kinds of initiatives underway, which have been supported by numerous studies by academics and experts. Participants in the conference on the Southern Cone were especially critical of recent policies, at the same time recognizing the fundamental change in the way that the problem of crime and violence is understood and in the government's investment in forums, debates, and studies that provide evidence for improving the quality of public policy.

Overall, there continues to be insufficient emphasis on prevention, and comprehensive police reform efforts have yet to produce the desired results. The gap between theory and practice thus continues to widen, leaving public officials with few real successes to demonstrate. Notably, the political left in Latin America has also failed to develop innovative alternative security policies, a point made by several participants from those countries.

V. Two Emerging Issues

(1) **Pacts with Organized Crime Groups: Results, Complexities, and Challenges**

It is not always possible to fight crime within the framework of the norms and institutions of the state, and there are numerous historical precedents for concluding pacts with criminal groups in order to limit their worst expressions. Countries including the United States have used such pacts as a form of harm reduction for the greater good of society. But what happens when societies with much weaker institutions conclude such pacts? This is without a doubt a key emerging question in Latin America.

Three cases from the region illustrate possible outcomes. The best known is the pact with drug trafficker "Don Berna" in Medellín, Colombia, in which the government allowed him to control the drug trade in exchange for a reduction in homicides (Medellín had the highest murder rates in the world). The extradition of "Don Berna" to the United States demonstrated the fragility and complexity of the agreement. A second case involves the secret agreement between Brazilian authorities and the First Command of the Capital (PCC) in São Paulo. A series of accords with the PCC regarding prison policies contributed to a significant reduction in violent homicides on the streets of São Paulo. A crisis developed in late 2012, however, and since that time violence in São Paulo has increased considerably. The newest example is that of the gang truce in El Salvador. As in the other cases, the government's role has been denied. Nevertheless, homicides have gone down significantly in a country that has one of the highest homicide rates in the world.

Questions about these pacts remain: How legitimate and sustainable can they be? Are they creating fertile conditions for even greater violence in the future by empowering organized criminal groups to regulate crime?

(2) **Drugs: New Approaches for Old Problems**

Drug trafficking and consumption are key themes in the regional security agenda. Even in countries considered to be far from international drug trafficking routes, the question of drugs has become a central public concern. That said, the definition of the problem is in flux and the challenge is different from country to country. Some are primarily concerned about cocaine trafficking to the United States and Europe by organized crime groups, while others face problems related to street level sales and consumption which have clearly impacted levels of crime and violence, especially in urban areas. The decades-long "war on drugs" has not had the desired success and there are many doubts about the best policies to pursue.

According to the U.S. State Department's International Narcotics Control Strategy Report, 15 of the world's 22 top drug producing and transit countries are in Latin America. The same countries appear over and over again, lending credence to the argument that current policies are not working and alternatives are needed, even more urgently in light of growing domestic consumption. Central America and the countries of the "Northern Triangle" are particularly vulnerable, as it is the natural path between South American drug producers and North American consumers. The State Department report highlights the fact that gangs are forming alliances with international organized crime groups. Are gang members the new drug trafficking capos, or an army of poor and violent soldiers with multiple social grievances? On this latter issue the report is silent.

Narcotraffickers are clearly taking advantage of globalization; the illicit trade between South America and Africa is expanding, but the United States remains the number one consumer of drugs produced in and trafficked from Latin America. Despite significant reductions in demand for drugs in the United States, trafficking routes old and new continue to lead there. Within the United States, drug control strategy has refocused to incorporate more treatment and prevention programs; the change is not insignificant and reflects a recognition of the depth and complexity of the drug problem for the United States and indeed, the world. President Obama's effort to reduce consumption by 15 percent between 2010 and 2015 acknowledges the significant potential cost savings of prevention (an estimated $18 is saved for every dollar invested in prevention) and the limits of purely punitive policies. The acknowledgement of the social roots of the phenomenon has opened a new window of opportunity for discussion in the region; Latin American governments should take up the challenge, devising alternatives to the imprisonment of drug consumers and instead offering programs that focus on public health, education, and alcohol and drug use prevention.

While there is agreement in Latin America that the "war on drugs" has not been the solution, there is less certainty over the way forward. Systematically but incrementally, leaders across the region are searching for ways to confront the increase in violence related to trafficking as well as the overwhelming social consequences of domestic drug consumption. Despite a lack of consensus on the issue of legalization, most agree that consumption should be addressed through a greater emphasis on public health. At the same time, however, sentencing and punishment for drug-related offenses have increased, to the point that the number of those incarcerated for drug possession and consumption far exceeds the numbers detained for more serious trafficking

offenses. The public at large is also unsure about how best to move forward. Polls register concern but also fear that has led to an increased demand for punishment. Drug policy will continue as a central priority for political action and public debate in the region.

In shaping those debates, there is a clear need to generate solid information that will improve public policy design and implementation. There appears to be agreement on the need to increase funding for public health programs. Thus far, that recognition has produced only limited changes in policies that would have a real impact on a growing problem.