

Alternatives to litigation could enhance the quality of Latin America's underperforming justice systems



Processes like mediation, conciliation, and arbitration can be cheaper, faster, and much more effective than going through the courts. A greater emphasis on their use could help reduce court congestion, minimise public expenditure, and ultimately improve wider economic performance, writes [Julio-César Betancourt](#).

Over a decade ago, [comprehensive research](#) in the area of judicial performance in Latin America concluded that “the judicial systems of Latin America remain among the most inefficient, ineffective, and corrupt in the world.”



In Latin America, few have faith in the scales of justice ([Edward Lich](#), CC0)

[More recently](#), researchers have found that the percentage of citizens with “little” or “no” confidence in the judiciary has risen to 70 per cent. This is perhaps unsurprising when Transparency International's latest [People and Corruption](#) report reveals that in Honduras, for example, 56 per cent of respondents admit to having bribed court officials. [Judicial corruption scandals](#) have also come to light in Colombia, Peru, Guatemala, and Mexico. This is not merely a legal issue, however. As the Organisation for Economic Co-operation and Development [has found](#), there is a clear link between well-functioning judiciaries and economic performance.

Despite the poor reputation of the courts and subsequent doubts about their legitimacy, Latin American citizens have tended to have little choice but to petition their national courts to resolve a given conflict. But is there an alternative?

Justice without courts and alternatives to litigation

The notion of “justice without courts” – or justice out of court – refers to the possibility of achieving justice by means other than litigation. These means include mechanisms such as mediation, conciliation, or arbitration. Though the idea of settling and resolving disputes in this manner is not entirely alien to Latin American countries, oftentimes the relevant parties utilise them not by choice but by obligation.

Such mechanisms are largely employed as a preliminary step before the initiation of court proceedings rather than as a deliberate attempt to solve the relevant conflict without recourse to national courts. This is in part because no Latin American country has emphasised the importance of the strategic deployment of such mechanisms, and citizens are therefore unlikely to be familiar with the alternatives available or with their strengths and weaknesses.

Yet, alternatives to litigation are manifold, usually serving to prevent, manage, settle, and resolve conflicts and disputes. Crucially, they can be cheaper, faster, and much more effective than litigation.

Research from the [Uría Menéndez Latin American Network](#) shows that in countries such as Colombia, Brazil, and Ecuador, for example, there is an average time to judgment of 1825, 2160, and 2500 days respectively, and that excludes enforcement. In other words, judgements take between 59 and 82 months to arrive, which equates roughly five to seven years. Though cases naturally vary, it is safe to assume that these statistics do not generally relate to claims involving large sums of money.

These figures are all the more shocking when contrasted with institutional statistics in the areas of arbitration and mediation. The London Court of International Arbitration, for instance, [concludes](#) "over 70% of cases with an amount in dispute under USD 1 million ... within 12 months." The Centre for Effective Dispute Resolution, meanwhile, [manages to settle](#) 74 per cent of cases on the same day of mediation.



Alternatives to litigation can be faster and less costly than going through the courts ([rawpixel](#), CC0)

The main disadvantage of settling conflicts outside of court in Latin America, however, relates to enforcement. Since [enforcement mechanisms are weak](#), agreements to negotiate, mediate, or arbitrate always face the threat of being overturned in national courts (with the exception of international arbitration agreements).

However, Latin American citizens are morally as well as legally bound to comply with agreements of this sort. And from this point of view, alternatives to the court system can also be considered tools to re-educate citizens on civic duty as well as law and order. After all, in most societies citizens are expected to fulfil their obligations without court interference.

The need for a new access-to-justice model

It is a paradox that in Latin America the vast majority of law schools continue to focus on a system with which most citizens are dissatisfied. This does not mean that the existing curriculum should be abolished, but it does suggest that greater emphasis should be placed on the use of alternatives.

The role of Latin American law schools in disseminating the concept of justice without courts is not limited to their faculties and students, however. It should extend to users of the traditional justice system, not least because they are the ones currently obliged to settle their disputes via the national courts.

Even in those Latin American countries where litigation works relatively well, it still makes sense to extend the law school curriculum to include the study of alternatives to litigation, which can help reduce court congestion, minimise public expenditure, and ultimately improve wider economic performance.

A new access-to-justice model along these lines may not tackle the roots of the problems associated with judicial performance in Latin America, but the experience of common-law countries suggests that a properly developed version of this new model would enhance the quality of the region's justice systems.

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