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FEATURED Q&A

Does El Salvador's Judicial Crisis Bode Ill for Democracy?

Q A dispute between El Salvador's legislative and judicial branches escalated to a constitutional crisis this month, with two separate groups of judges claiming to be the country's legitimate Supreme Court. After a stalemate and pressures both domestically and internationally to resolve the dispute, the two main political parties agreed to hold talks on July 24. What is behind the conflict? Does the conflict have implications for the state of the country's democracy or is it fundamentally a political issue? How should it be settled?

A Francisco Altschul, El Salvador's ambassador to the United States: "President Mauricio Funes last week began a process of 'conflict-resolution' with all the political parties represented in the Legislative Assembly, including the main opposition party, ARENA. Through this process, partial agreements have already been made within the constitutional framework and in accordance with the rule of law. A comprehensive resolution is expected soon to end the conflict between the Supreme Court of Justice and the Legislative Assembly. In our opinion, we are witnessing the complicated process of consolidating the institutions in an emerging democracy. Twenty years ago, the situation between the Legislative Assembly and the Supreme Court would have been impossible, simply because all branches of government—executive, legislative and

judicial, were controlled by the same group: Salvadoran economic elites and their political allies. The fact that we are now facing this issue is more a result of independent government institutions trying to define their limits, rather than a conspiracy to consolidate control by a political faction over other institutions. Our government is confident that we are moving in the right direction to find a solution. Almost a year ago we went through a quarrel between the Legislative

Continued on page 4



HSBC Apologizes for Mexico Money Laundering Lapses

Britain's HSBC apologized Monday to its shareholders for failing to prevent money laundering through accounts at its unit in Mexico. "What happened in Mexico and the U.S. was shameful," said CEO Stuart Gulliver. See story on page 2.

File Photo: HSBC.

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NEWS BRIEFS

Chávez Travels to Brazil on First Official Foreign Trip in a Year

Venezuelan President Hugo Chávez traveled Monday to Brazil, his first official foreign trip since being diagnosed with cancer more than a year ago, BBC News reported. Since his diagnosis, Chávez has traveled only to Cuba for medical treatments. Chávez will participate today in a summit of Mercosur countries, which are expected to admit Venezuela as a member.

Mexican Economy Grows 4% in Second Quarter: Finance Ministry

Mexico's economy likely grew around 4 percent in the second quarter compared to the same period a year earlier, the Finance Ministry said Monday, Dow Jones reported. Strong exports and rising domestic demand helped boost the figures. The ministry said that government revenues were up 9 percent on higher oil income, but spending was up as well. The country's net debt grew by 1.9 percent compared to the end of 2011, rising to 33.6 percent of GDP, according to the Associated Press.

Nicaragua Hires Dutch Firms for New Canal Feasibility Study

Two companies from the Netherlands, **Royal HaskoningDHV** and **Ecorys**, on Monday said they have been awarded a \$720,000 contract by the Nicaraguan government to study the feasibility of building an alternative to the Panama Canal that would cross Costa Rica and Nicaragua, the Associated Press reported. The firms said they will complete the study early next year. The cost of the canal could be \$20 billion, a sum that would require the participation of international partners and investors.

Political News

Colombia's Cocaine Production Drops 72 Percent Since 2001: U.S.

Colombia's production of cocaine as of last year dropped 72 percent since 2001, according to a report released Monday by the White House's Office of National Drug Control Policy. The report added that the Andean nation's production of the drug fell 25 percent in 2011 as compared to 2010. The new figures put Colombia third in cocaine production after Peru, which produced 325 metric tons of the drug in 2010, and Bolivia, which produced 265 metric tons in 2011. The White House report differed from a report released last week from the United Nations Office on Drugs and Crime, which said Colombia had 345 metric tons of cocaine production last year.

Company News

HSBC Apologizes to Shareholders Over Money Laundering

Britain's **HSBC** apologized Monday to shareholders for failing to prevent money laundering connected to its unit in Mexico, Reuters reported. At the same time, the bank said it took a \$700 million charge to cover related penalties in the United States. The charge was part of \$2 billion in provisions that the bank set aside to cover regulatory problems, including ones in Britain. The statements came as the London-based bank, Europe's largest, reported that its pretax profit increased 11 percent in the first half of this year on a \$4.3 billion gain from the sale of assets. In the first half, the bank earned pretax profits of \$12.7 billion, up slightly from \$11.5 billion in the same period last year. CEO Stuart Gulliver said HSBC is working to ensure that it complies with anti-money laundering regulations. A U.S. Senate report released earlier this month faulted the bank for not doing enough to prevent its accounts from being used to launder billions of dollars in suspected drug money. "What happened in Mexico and the U.S. was shameful," said Gulliver, *The Wall Street Journal* reported.

Mexico's banking regulator, the National Securities and Banking Commission, said July 25 that it fined HSBC \$28 million for failing to stop money laundering through its accounts. HSBC has acknowledged that it did not report 39 suspicious transactions

“What happened in Mexico and the U.S. was shameful.”

— Stuart Gulliver

and belatedly reported an additional 1,729, Reuters reported. HSBC has said that it has tightened its anti-money laundering controls since 2007 and 2008, the period when the U.S. Senate report said HSBC Mexico sent some \$7 billion in cash to the United States. "Bulk cash shipments could reach that volume only if they included illegal drug proceeds," said the report. HSBC's chairman, Douglas Flint, said Monday that the bank is committed to further improving its controls against illicit transfers. "We must demonstrate that we have learned from earlier mistakes," said Flint. "The banking industry is operating in a hostile climate so we must double our efforts to convince our regulators, customers and investors that we are striving for the highest possible standards. Only that way can we allay public fears and regain trust in our industry."

Brazilian Government to Act as 'Mediator' in GM Labor Dispute

Brazil's government will not take sides on a labor dispute involving the local operations of U.S.-based automaker **General Motors**, but will act only as a "mediator," Labor Minister Carlos Brizola Neto said Monday, Dow Jones reported. Demand has been weakening for the passenger cars produced at GM's plant in São José dos Campos in São Paulo state, leading the company to consider job cuts. GM has not yet decided on cutting positions, but the number of workers at the plant exceeds the company's needs, a company spokesman

told the news service. Brizola Neto said the automaker's executives have been "sensitive" in the matter. "What we are most worried about is the possible impact of sudden, mass firings," Brizola Neto said at a news conference. As many as 1,500 jobs at the plant could be in jeopardy, according to union officials. Brizola Neto also refuted criticism that the government,



Brizola Neto

File Photo: Brazilian Government.

which announced tax cuts for the auto industry, is being lenient toward GM. "The company began studying this decision before the tax cuts were announced. Furthermore, GM has promised to add jobs at its other units in Brazil. They are not reducing jobs, on a net basis, but rebalancing their workforce," Brizola Neto said. Brazil's finance minister, Guido Mantega, is scheduled to meet today with officials of GM and Anafavea, the country's automakers' association. Job cuts could be seen as a violation of an agreement companies struck with the government in order to implement the tax cuts, Dow Jones reported. Officials from the Labor Ministry will discuss the looming job cuts with GM and union officials on Saturday, said Brizola Neto.

Petrobras Sees Slight Drop in Production of Oil, Natural Gas

Brazil's national oil company, **Petrobras**, said Monday that its average production of oil and natural gas in June fell slightly compared to the month before, to 2.58 million barrels of oil equivalent per day (boe). Scheduled maintenance stoppages at platforms in the Campos Basin led to a reduction of 1.5 percent in oil production compared with the previous month. Domestic fields produced 2.34 million boe, while overseas production was 244,603 boe. Although liquefied natural gas output rose 4.9 percent compared to the 57 million cubic meters produced in May, the company's production of natural gas declined nearly 5 percent over May due to reduced demand for gas produced by Petrobras in Bolivia, the company said.

The Dialogue Continues

What Must Caribbean Nations do to Fight Crime?

Q Trinidad and Tobago's National Security Minister, Jack Warner, who was appointed last month in a major cabinet reshuffle by Prime Minister Kamla Persad-Bissessar, said July 13 that a major new anti-crime plan is in the works for the Caribbean nation, the *Trinidad & Tobago Express* reported. "It is dysfunctional here and in other places," Warner said, referring to the high levels of violence that have plagued a number of Caribbean nations. What challenges do governments in the Caribbean face as they attempt to reduce rising crime? How does crime affect the economies of Caribbean nations and what steps should the public and private sectors be taking to remedy the situation? Considering the role of narcotics trafficking in the region's crime problem, is the United States, a key drug destination, doing enough to partner with the Caribbean?

A Anthony T. Bryan, senior fellow at the University of the West Indies in Trinidad and Tobago: "Pressure is strong on Caribbean governments to deliver immediate results (a quick fix) or crime containment, as opposed to long-term institutional reform programs. Last week, the Trinidad and Tobago Chamber of Industry and Commerce called for the Ministry of National Security to receive a large chunk of the 2012-2013 budget because crime is a hindrance to doing business in T&T. Unfortunately, many business and political leaders in the region are still thinking about the phenomenon in traditional terms of criminal activity with a focus on gangs. While the issue of street gangs must be addressed, young people need to have a sense of being valued and belonging to the wider community, not just the gang territory. Money should be invested in programs to help and protect gang members wishing to leave street gangs.

The current regional trend of active participation of the military in domestic crime control runs the risk of 'militarizing' law enforcement further. None of the island states is as yet run completely by transnational criminals or drug lords, but crime cartels are probably embedded in several of the societies, facilitated by an apparent widespread culture of corruption. Consequently, there is concern about the reach of transnational criminal organizations that can manipulate political parties and campaigns, infiltrate law enforcement institutions and

“Young people need to have a sense of being valued ...”

— Anthony T. Bryan

the justice system. The impact is not simply a domestic issue. It has to be raised to the level of a threat to national, regional and international security. Washington should focus on stemming flows of arms and money from the United States to the region. More genuine cooperation among Caribbean and Central American governments could be enhanced if Mexico and Colombia, given their frontline experiences, were involved in the planning. The International Commission against Impunity Agreement in Guatemala should be examined by countries in the Caribbean as a way to invite international involvement in strengthening local prosecutions against corrupt officials. This might be appropriate where justice systems appear to be weak or are under threat."

Editor's note: The above is a continuation of a Q&A published in the July 27 issue of the Advisor.

Featured Q&A*Continued from page 1*

Assembly and the Supreme Court of Justice which after weeks of political uncertainty was satisfactorily resolved. We are now facing a similar situation, which we all hope will end positively as soon as possible."

A **Mirte Postema, senior program officer in the Judicial Independence Program at the Due Process of Law Foundation:**

"El Salvador has seen a judicial revolution of sorts in the past couple of years. In 2009, five new judges were elected—four of whom were appointed to the Constitutional Chamber. These constitutional judges came to be characterized by their independence and their refusal to succumb to pressures from political and economic powers, which made the chamber an important model for judges in the region. However, this was clearly not to the liking of political powers. There have been numerous attacks on the Constitutional Chamber, most of which—such as Decree 743 of June 2011, that required decisions on constitutionality to be unanimous—originated in the Legislative Assembly. When the assembly decided that it would not implement the Constitutional Chamber's last decisions, declaring unconstitutional the appointments to the Supreme Court made in 2006 and 2012, a crisis erupted. This refusal is a very serious issue that affects the basis of democracy: the respect for the rule of law. It is extremely worrying that a state power, the Legislative Assembly, is so blatantly violating these principles. The only solution that is in compliance with rule of law principles is that the judgments are implemented: the judges initially appointed in 2006 and 2012 need to be selected again. The agreement that was reached between political parties and President Funes on July 24, in which all parties involved committed themselves to resolving this crisis within the limits of the Constitution, seems to be a step in the right direction. However, it remains to be seen how the agreement will be implemented. Either way, this crisis underscores the necessity of a more rigorous selection

procedure for judges, providing a real investigation of candidates' merits and full transparency."

A **Michael Shifter, president, and Rachel Schwartz, program assistant, at the Inter-American Dialogue:**

"The conflict between El Salvador's National Assembly and judicial branch appears at its core to be a political dispute. In an act of political gamesmanship, the FMLN, in alliance with the GANA party, sought to appoint its candidates to the Supreme Court before losing its upper hand to rival ARENA in the April 2012 legislative elections. Yet both parties have resorted to such tactics. In 2006, ARENA, in a move similarly denounced by the Constitutional Court, also violated the mandate limiting the selection of justices to once per legislative term to engage in similar political jockeying. The current standoff may be largely political but it nonetheless has important implications for Salvadoran democracy. The crisis can be viewed in the context of other recent attempts to curtail the power of the court, which has recently assumed a more activist posture. In June 2011, President Funes signed into law a decree forcing the Constitutional Court to issue decisions unanimously, which would have severely hamstrung judicial decision-making and independence. The legislature overturned the law largely as a result of civil society pressure, a factor that could also break the current impasse. However, a resolution to the institutional crisis will most likely come about through political negotiations between the two major parties to find an agreed upon way to carry out new court selections. But beyond settling this dispute and regardless of who controls the legislature, the challenge of preserving judicial autonomy will likely remain given the prevailing political environment."

The Advisor welcomes reactions to the Q&A above. Readers can write editor Gene Kuleta at gkuleta@thedialogue.org with comments.

Latin America Advisor

is published every business day by the Inter-American Dialogue, Copyright © 2012

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Latin America Advisor is published every business day, except for major U.S. holidays, by the Inter-American Dialogue at: 1211 Connecticut Avenue, Suite 510 Washington, DC 20036 Phone: 202-822-9002 Fax: 202-822-9553 www.thedialogue.org ISSN 2163-7962

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