Judicial Challenges in the New Millennium
Proceedings of the Second Ibero-American Summit of Supreme Courts and Tribunals of Justice

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No. 395 Saleh and Dinar, Satisfying Urban Thirst: Water Supply Augmentation and Pricing Policy in Hyderabad City, India
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No. 397 Lovei, Phasing Out Lead from Gasoline: Worldwide Experience and Policy Implications
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(List continues on the inside back cover)
Judicial Challenges in the New Millennium

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Edited by
Andrés Rigo Sureda
Waleed Haider Malik

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Contents

Foreword v
James D. Wolfensohn
Abstract vi
Preface vii
Acknowledgments ix
List of Participants and Attendees x

Part I Overview 1
Judicial Challenges in the New Millennium 3
Andrés Rigo Sureda, Acting Vice President and General Counsel, Legal Department, World Bank and Waleed Haider Malik, Public Sector Management Specialist, Public Sector Group, Poverty Reduction and Economic Management Unit, Latin America and the Caribbean Region, World Bank

Part 2 Opening and Introductory Remarks 11
Justice Reform, Social Peace, and Democracy 13
Sr. Hugo Chavez Frias, President of Venezuela
Reform Challenges in Ibero-America 15
Justice Cecilia Sosa Gómez, President of the Supreme Court of Justice of Venezuela
Legal and Judicial Reform: Lessons of Experience and the Bank’s Future Role 19
Andrés Rigo Sureda, Acting Vice President and General Counsel, Legal Department, World Bank

Part 3 Judicial Organization: Toward Reform 23
Autonomy and Budgetary Independence and Education in Ibero-America 25
Justice Cecilia Sosa Gómez, President of the Supreme Court of Justice of Venezuela (for Justice Arturo Hoyas, President of the Supreme Court of Panama)
Judicial Management Information Systems 35
Justice Carlos Mario Velloso, Vice President of the Supreme Federal Tribunal of Brazil
Judicial Discipline 37
Justice Héctor Romero Parduco, President of the Supreme Court of Justice of Ecuador
Citizen Participation in Judicial Processes 39
Justice Julio Salvador Nazareno, President of the National Supreme Court of Justice of Argentina
Institution Reform: Next Steps 43
Justice Victor Raúl Castillo, President of the Supreme Court of Justice of Peru
Part 4  Fight Against Corruption: Raising Awareness and Promoting Ethics  51
Ethics of the Ibero-American Judicial Officer  53
Justice Jorge Subero Isa, President of the Supreme Court of Justice of the Dominican Republic
Mock Trial  59

Part 5  Human Rights Development, Norms, and Citizen Security  65
Application of Norms of International Law and of the Jurisprudence
of the Inter-American Court of Human Rights  67
Justice Cecilia Sosa Gómez, President of the Supreme Court of Justice of Venezuela
Victims' Human Rights  73
Justice Orlando Aguirre Gómez, President of the Second Chamber of the Supreme Court
of Justice of Costa Rica
Administration of Justice and Citizen Security  75
Justice Jorge Eduardo Tenorio, President of the Supreme Court of Justice of El Salvador

Part 6  Complexities and Social Consequences of Drug Trafficking  79
Comparative Analysis of Ibero-American Legislation  81
Justice Fernando Arboleda Ripoll, Vice President of the Supreme Court of Colombia
Minors and Drugs  85
Justice Jorge Leslie Bodes Torres, President of the Criminal Chamber of the Popular Supreme Tribunal of Cuba
Drugs and the Bridge Countries  87
Justice Armando Figueira Torres Paulo, Vice President of the Supreme Tribunal of Justice of Portugal
Financial Offenses: Money Laundering  91
Justice Maria M. Naveira de Rodón, Associate Judge of the Supreme Tribunal of the Puerto Rico Frei Associated State

Part 7  International Network for Judicial Knowledge Sharing  95
Observer Comment  97
Justice Ajmal Mian, Chief Justice of the Supreme Court of Pakistan
Update on the Network  99
Dr. Alvaro Leal, Manager, Supreme Court of Justice of Venezuela Modernization Project

Part 8  Closing Comments and Conclusions  101
Closing Comments and Conclusions  103
Justice Cecilia Sosa Gómez, President of the Supreme Court of Justice of Venezuela
Second Caracas Declaration Caracas, Republic of Venezuela, March 24–26, 1999  105
Foreword

Recently, the World Bank conducted a study, *Poverty Trends and Voices of the Poor*, in which we asked 60,000 poor people in 60 countries what might make the greatest difference in their lives. Among the many voices was that of a woman in Latin America who said, “I do not know whom to trust, the police or the criminals. Our public safety is ourselves. We work and hide indoors.”

The law is of little use to the poorest and most vulnerable people if they can only expect brutality from police and corruption from the courts. A sound judiciary ensures that citizens live without fear, secure that their human rights will be upheld. But a strong legal system with honest and fair judges also ensures that corruption does not undermine good governance, that property rights and contracts are protected, and that the framework for commercial laws, taxes, and financial regulation is applied transparently. It provides the right environment for fostering the private investment required to propel equitable and sustainable economic growth.

The Second Ibero-American Summit of Supreme Courts and Tribunals of Justice, held in Caracas March 24–26, 1999, and attended by more than 20 chief justices and presidents and over 200 judges from 25 nations, was dedicated to building strong, independent judiciaries across Latin America. The proceedings of that meeting, gathered in this volume, contain knowledge that is both relevant and timely. Who better to chart the path to improving judicial organization, to stopping corruption, to protecting human rights, and to fighting drug problems than the judges who face these issues—and the challenge of improving their own practice—every day?

The World Bank’s support for judicial reform in recent years has taught us that these efforts must come from within the country, be participatory, and be owned by governments and nongovernment stakeholders. With these lessons in mind, I am proud that the Bank was able to facilitate such a valuable exchange of experience and wisdom in Caracas and to now make it available to an even wider audience.

James D. Wolfensohn
President
World Bank Group
Abstract

In search of an optimal judicial role in social and economic development, many initiatives and meetings on judicial reform have been undertaken in the past few years in Latin America and around the world. One such meeting assembled more than 20 chief justices and presidents of supreme courts and over 200 members of Latin American judiciaries with an eye toward developing judicial reform strategies for the next millennium. The meeting focused on: judicial organization, citizen participation, judicial discipline, judicial ethics and corruption, human rights, citizen security, and drug problems. The summit also included a mock corruption trial. The papers collected in this volume were presented at the proceedings of the Second Ibero-American Summit of Supreme Courts and Tribunals of Justice, held on March 24–26, 1999, in Caracas, Venezuela. This regionwide conference was intended to promote the flow of ideas and perspectives among chief justices, judges, and practitioners in the judicial sector in Latin America, the Caribbean, Spain, and Portugal. Several observer country justices from outside the region, including Egypt, France, Guyana, Pakistan, Romania, and the West Indies, also participated. Representatives of nongovernmental organizations and several other local and international observers also attended the summit.
The Supreme Court of Venezuela, with assistance from the World Bank, hosted the Second Ibero-American Summit of Supreme Courts and Tribunals of Justice (also referred to as the judicial reform summit) in Caracas, Venezuela, on March 24–26, 1999. This regionwide conference was designed to promote knowledge and perspectives among judges and judicial practitioners in Latin America, the Caribbean, Spain, and Portugal. Participants and observers included more than 20 chief justices and presidents and over 200 judges from 25 nations, several nongovernmental organizations, representatives of the legal and judicial sectors, and members of the international development community.

The judicial reform summit addressed the need to identify effective strategies for improving the administration of justice in Latin America and the Caribbean primarily by providing swift and fair resolution of disputes and reducing the delays that plague many judicial systems. The summit focused on the following themes: judicial organization, citizen participation, judicial discipline, judicial ethics and corruption, human rights, citizen security, and drug problems. The summit also included a mock corruption trial. The format allowed each theme to be explored at some length, first by the speakers then by other participants through open floor discussions.

The drive for judicial reform has intensified over the past few years. Some institutional reform plans and initiatives have informed the debate, such as the United States Federal Courts’ Long Range Plan, the State of Virginia Strategic Plan, the State of California Long-Range Plan, the Woolf Report on the Civil Justice System in England and Wales, the Canadian Bar Association Task Force Report on Court Reform, and the Sackville Report on Access to Justice in Australia.

In addition, several reviews and meetings on judicial reform have been organized through, for example, the World Bank, the United States Agency for International Development, the Asian Development Bank, the Inter-American Development Bank, GTZ (Gesellschaft für Technische Zusammenarbeit), the Ford Foundation, the Asia Foundation, the Tinker Foundation, the International Development Law Institute, Due Process of Law Foundation, Lawyers Committee for Human Rights, the Commonwealth Secretariat, the United Nations Development Programme, the Organization of American States, and the European Union.

This report of the summit proceedings has been prepared to demonstrate that these types of meetings can be an effective means of promoting the exchange of ideas about reform. It is hoped that
this volume, which reports on the judicial reform challenges of 25 countries in Latin America and in other parts of the world, will help judiciaries identify effective strategies for improving the administration of justice in their countries. Such efforts, in turn, can be expected to benefit law schools, lawyers, bar associations, government officials, court administrators, policymakers, legislators, international development agencies, and nongovernmental organizations.

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The material in this volume is mostly from transcripts in Spanish that have been translated into English and edited for readability. All efforts have been made to adhere to the original in the English language-equivalent titles of participants and terms.
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Sr. Hugo Chavez Frías, President of Venezuela

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Part I

Overview
In the past few years many initiatives and meetings on judicial reform have been undertaken in Latin America and elsewhere that are concerned with improving the judiciary’s role in social and economic development. One such meeting, the Second Ibero-American Summit of Supreme Courts and Tribunals of Justice, assembled more than 20 chief justices and over 200 judges from 25 nations to focus on developing judicial reform strategies for the next millennium. Representatives of nongovernmental organizations (NGOs) and several other local and international observers also attended. This volume contains the proceedings of the summit, which was held on March 24–26, 1999, in Caracas, Venezuela.

The participants’ presentations reflect their common understanding that the 21st century will be a knowledge century in which management of a society’s knowledge resources will be critical to promoting and developing new concepts, methods, and practices across public and private institutions, age and gender groups, rich and disadvantaged groups, urban and rural groups, formal and traditional groups, and regions and states. Participants also emphasize that over time judiciaries have provided profound insights into the knowledge of human affairs and markets. Modern democracies and judicial developments are establishing a heritage of good practices—transparency, fairness, honesty, access, and judicial independence—that must be continued in the new millennium. There is awareness, too, that a proactive role of the judiciary is essential in leading change and adapting to new realities. Although legal and judicial systems vary from one country to another, several elements of the efficient and fair administration of justice are common to many developing and industrial countries alike. Similarly there are common regional and global reform experiences and challenges from which lessons can be drawn and shared. Many of these ideas, perspectives, and strategic considerations with regard to judicial organization, anti-corruption measures, human rights protection, and drug problems may help chart the path to better judicial performance in the region.

**Reform challenges and the lessons of experience**

In his opening remarks, Sr. Hugo Chavez Frías, President of Venezuela, reflects on the urgency of the region’s judicial reform and hopes that the summit will produce results. As the new head of state, President Chavez sees many challenges ahead for his country—poverty, corruption, human rights, drug trafficking, and weak public services. But in those challenges he sees hope and lessons for the entire region.

In her opening statement, Justice Cecilia Sosa Gómez, President of the Supreme Court of Justice of Venezuela, invites the participants to evaluate compliance with policies on judicial organization, corruption, human rights, and drug trafficking. She believes that the judiciary should promote the strengthening of its independence from other branches of government by becoming more efficient and reaffirming its fundamental principles. Justice Sosa notes that at the preceding summit in March 1998, the justices agreed to:

- Find mechanisms to ensure their independence and protection from outside interference.
Promote preparation and training mechanisms for judges as well as share lessons learned with other countries.

- Fight corruption and adhere to an efficient application of the rules to strengthen their effective control and sanctions.
- Propose amendments or promulgation of laws providing for adequate jurisdictional control on those responsible for serious crimes.
- Request the promulgation of laws and treaties from other branches to clearly define narcotic and psychotropic substance use as a crime against humanity.

Mr. Rigo points out that the Bank and member countries saw legal and judicial reform as being part of the enabling environment for growth. This view is now broadening with growing recognition of the legal and judicial systems' importance in strengthening good governance as well as sustainable development. Mr. Rigo describes the numerous challenges confronting judicial systems worldwide—challenges related to poverty, globalization, crime, trade, technology, corruption, migration, urbanization, conflicts, and democratization—and how different regions of the world are coping with these developments. He notes that problems of authority, legitimacy, compliance, and ineffective judicial systems are common to all.

Mr. Rigo says that the emerging lessons of judicial reform experience were that country ownership and commitment are critical, a one-size-fits-all approach does not work. A multidisciplinary approach that is holistic and properly sequenced is needed. Formal and traditional mechanisms should be appropriately supported, access to justice of the under privileged should be ensured, and donor coordination is important. Finally, Mr. Rigo describes the progress of the Bank's new approach with respect to support for legal and judicial reform and its salient features. Reform aims to be inclusive, country-driven, and collaborative. It draws on interdisciplinary skills, does not seek to impose predetermined models, and is culturally sensitive.

Facets of judicial organization and management

In the changing knowledge environment, management and organization of judicial systems will require constant reviewing and upgrading, particularly in areas such as autonomy in budget formulation, strategic use of information technology in judicial management, promotion of mechanisms and structures that strengthen judicial accountability and tools to ensure the desired participation of civil society in the court system.
Autonomy and budgetary independence and quality of human resources

In his presentation (delivered by Justice Sosa) Justice Arturo Hoyos, President of the Supreme Court of Panama, examines use of the judiciary budget to promote a process that will guarantee the autonomy of the judiciary. Second, he reviews the mechanisms for the selection of judges that would promote judicial stability, emphasizing strengths and weaknesses in the education and training of human resources. In addition, funding should be able to maintain a remuneration system that attracts the best judges. In many Latin American countries the autonomy of the judiciary is recognized by statutory authorization of its annual budget, using either a percentage of revenues or a similar alternative. In some countries the executive cannot change the budget requested by the judiciary; only the congress is entitled to do so. This method guarantees non-interference in the judiciary by other branches of the government. Although some budgetary autonomy is guaranteed in the region, the system of budgetary planning continues to be marked by criteria established by the executive. Justice Hoyos emphasizes that proposals to safeguard budgetary autonomy and independence must be based on creating a judiciary’s own system and mechanisms of budgetary or judicial planning. Proposals for budget autonomy must be guided by four parameter—good management, planning, reporting, and control of budgetary execution. The work of the judiciary in Latin American countries is normally judged in terms of the volume of decisions produced by the system, without regard to the volume of cases that enter the courts. For this reason judiciaries must also stress the need to improve statistics and assess the impact of changes in the law on the workload of the courts.

Strategic use of information technology in judicial management

Justice Carlos Mario Velloso, Vice President of the Supreme Federal Tribunal of Brazil, describes the concept of juridical information systems and how they are benefiting the administration of justice, particularly in Brazil. He points out that information systems were first introduced in 1974 in electoral justice and subsequently in the judiciary. The services provided by the Brazilian judicial information systems are legal foundations of legislation, juridical information, statistics, management materials and patrimony, human resource management, case follow-up, and textual retrieval. Justice Velloso stresses that the justice system clearly benefits from the computer revolution and notes that Brazil plans to link all courts with the Supreme Court’s information technology network. He believes that this strategic integration is important and provides information and access to decisions and jurisprudence of all courts and permits, for example, planning ahead via the computer, de facto distribution of cases, designation of audiences, and issuance of summons.

Strengthening of judicial accountability, discipline, and independence

Adequate procedures for the enforcement of judicial discipline are essential for a well-functioning judicial system. Justice Héctor Romero Parducci, President of the Supreme Court of Justice of Ecuador, highlights judicial discipline as one of the elements of judicial independence protected by the constitutional standards of Ibero-American countries. Recognition and respect for the judiciary are indispensable to democratic life, harmony between government and those governed, the guarantee of public freedoms, and respect for human rights. Justice Romero focuses on both the professional and personal life of judicial officials. The judiciaries should strive for the enhancement of recently incorporated judicial staff and for a rigorous selection of the new judicial officials. They should also take into consideration the knowledge and ethical practices of the candidates instead of concentrating only on their professional specialties. Justice Romero stresses that every act or omission by a judge that compromises the stated principles must be subject to disciplinary actions. Justice Romero refers to the disciplinary authority of the judicial function in his country. It governs five types of disciplinary actions—warning, fine, temporary suspension, removal, and dismissal.

Citizen participation in the judicial process

Justice Julio Salvador Nazareno, President of the National Supreme Court of Justice of Argentina, spoke of participation of civil society in the judicial
reform process to ensure commitment and promote legitimacy of reform efforts. He examines several aspects of the challenges and methods involving civil society in the justice system. He points out that one of the mechanisms, intended to link society and the state, is the amicus curiae (friend of the court). The amicus curiae was the person who supplied information about legal issues, reminding the judiciary of applicable precedents or doctrines. Such devices are used to try to persuade the court to adopt the resolution that is most favorable to their interests. Justice Salvador also outlines other areas where civil society participates in the judicial process, such as mediation and the judiciary council, which also make use of civic participation. An increasing number of cases in Argentina are resolved by mediation, a reflection of the public's preference for such mechanisms. He also points out that the judicial council also constitutes a useful tool for allowing the desired participation of citizens in the judicial system. He notes that trial by jury is the maximum expression of the participation of citizens in judicial processes, but it may not be the optimum method for each country.

**Judiciary's new organic structure in Peru**

Justice Víctor Raúl Castillo, President of the Supreme Court of Justice of Peru, explains the Peruvian judiciary's new organic structure and most significant achievements. He points out that the new organizational design aims to develop an efficient justice administration that strengthens democratic institutions. He mentions the creation of the Judicial Coordination Council, whose mission is to coordinate general policy, development, and organization guidelines for all public institutions in the judicial sector. He stresses that such a body is essential to achieve an adequate interinstitutional relationship so that the entire system can attain simultaneous and standard development. He also explains that Peruvian reforms have been focusing on decentralization and strengthening the integration and commitment of all the judges.

**Judicial ethics and the challenge of corruption**

Judicial ethics is the foundation of any judicial reform. In this section a code of ethics for the Ibero-American judicial civil servant is examined, and a court is established for a mock trial, which may serve as an example for handling corruption cases.

**Ethics of the judicial civil servant**

Justice Jorge Subero Isa, President of the Supreme Court of Justice of the Dominican Republic, notes that judicial reform in the region is urgent and necessary to consolidate the rule of law in each country. Justice Subero stresses that the judiciary must develop a more efficient, accessible, and transparent type of justice with stronger sanctions for wrongdoing and increased awareness of its role in maintaining social harmony. He points out that the reforms of the region's judicial systems must include a code of ethics to regulate the actions of the judicial sector. Before creating a code of ethics, Justice Subero suggests, it is important to agree on a definition of ethics. Ethics are the universal moral principles governing the behavior of people. They are necessary for the enjoyment of an orderly and peaceful life and have been recognized since people began to live in a society. They may evolve over time and vary from country to country, but the fundamental principles of behavior will always be the same. Justice Subero stresses that the main objective of any code of ethics is to maintain an optimum level of excellence and correctness in the behavior of officers, employees, and justices of the judiciary, gathering in a single body the rules of ethical principles that must rule the exercise of their functions. He proposes the adoption of common themes of judicial ethics—honesty, independence, impartiality, personal benefit, transparency, efficiency, wisdom, and political sense, among others. A code of ethics is an instrument that will promote transparency in the system and protect public confidence in the administration of justice.

**Simulated trial of a corruption case**

Presentation of the simulated trial is described to facilitate the establishment of judicial policies in the fight against corruption that all judges in the region must confront. The simulated trial, which dealt with corruption, establishes the model of a court that allows judges to adapt and apply international instruments on this matter.
Human rights development, norms, and citizen security

This session examines the effectiveness of the exchange of jurisprudence, particularly related to human rights and security, among the countries of the region and whether the instruments are being applied by the judges in their sentences.

Application of international norms and principles on human rights

Justice Sosa provides an in-depth study of the application of the jurisprudence of the Inter-American Court in the national ambit. Justice Sosa observes that in many Ibero-American countries, human rights are guaranteed in their constitution and are consecrated in international agreements, a trend that has increased with recent constitutional reforms. Furthermore, the commitments assumed by the states by virtue of these instruments generate obligations for all branches of public authority, including the judicial branch. Upon signing the American Convention on Human Rights, states assume the obligation to respect the rights recognized in the Convention and ensure the execution of rights by all people under its jurisdiction. She observes that states involved in cases pending before the Court tend to be more willing to cooperate with the Inter-American system. She stresses that strengthening of this spirit of cooperation will depend on the democratic strengthening of their judicial reforms in terms that are sensitive to civil rights and open to increased cooperation with NGOs. The other method that could make a contribution to strengthening the system is for the judiciary to accept full responsibility for the problems related to human rights violations inherited from the past.

Victims of violence and rights abuse

Justice Orlando Aguirre Gómez, President of the Second Chamber of the Supreme Court of Justice of Costa Rica, notes that the victims of violence have been forgotten and sometimes excluded from society by judicial systems. However, universal juridical sentiment has been evolving positively in favor of the victim. He argues that victims also have human rights—fundamental rights that must be acknowledged and protected by the state through procedural and substantive institutions. Justice Aguirre points out that victims must be allowed the right to demand—through simple processes in proceedings—compensation from the state. He notes that some governments in the region have initiated reforms in this area. Modernization programs tend to respond to three basic needs—citizen protection from authority and individual abuses, judiciary involvement in conflict resolution, and certainty in judicial decisionmaking. For example, to effectively protect victims, the judiciary must establish simple procedural systems to obtain damage compensation with minimal formality and without financial conditionings and bonds. Justice Aguirre also recommends that judicial organizations establish administrative offices for victims where they can get legal advice and protection. Most important, the state should create special laws, regulations, and jurisdiction for abused women and children. Whether the aggression comes from the family or society, women and children have the right to receive special treatment, consonant with their situation, and to be rescued. No poor country can move ahead without promoting its human resources and establishing such systems.

Citizen security and the courts

In his presentation, Justice Jorge Eduardo Tenorio, President of the Supreme Court of Justice of the Republic of El Salvador, affirms that if the state is not organized to achieve justice and that justice does not function properly, profound reform of the justice system is necessary. At the same time, he cautions against making the judicial branch the scapegoat for society's ills. He points out that there are several challenges ahead for the region in general, and El Salvador in particular. (El Salvador has recently implemented a new criminal procedures code.) One of the main tasks of the state is the harmonization and coordination of the administration of justice and public security. These two areas cannot be separated because there are several interrelations and common problems. He cautions against making the judiciary the scapegoat of society's ills. Justice Tenorio urges immediate attention to the structural causes of offenses and the adoption of an integrated criminal policy. He explains that
judicial reform should not overshadow the overall reform of the state, but strengthening judicial independence continues to be vital for ultimate recognition of the judicial branch as a unique arm of government, a key element for improved public security and judicial performance.

Complexities and social consequences of drug trafficking

The scourge of drug trafficking and money laundering, which affects the economic, social, and political fabric of society, transcends national borders. By way of finding solutions to such criminal activities, this session on drug trafficking evaluates and identifies common norms, as well as those that could be unified, to achieve international standardization of judicial processes and compatibility of penalties in the various judicial systems of the region.

Benchmarking Ibero-American legislation

Justice Fernando Arboleda Ripoll, Vice President of the Supreme Court of Justice of Colombia, traces legislation on drug trafficking in Latin America. He finds that although the drug phenomenon is common to all Latin American countries, causes vary from country to country. Colombia had a controversial type of legislation in the mid-1960s and early 1970s, whereas neighboring countries had stronger regulations. As a result, drug traffickers chose to operate in Colombia. This, in part, is a basis for the standardization and generalization of the legislative treatment of drug trafficking. To establish legislative developments in Latin America requires examining the content of international instruments that serve as a reference and establishing the type of influence that they exercise on statutes that are implemented in different countries. This examination, he notes, should also include the police because they are the providers of the raw material for the cases on which the judiciary will finally act. Justice Arboleda concludes that one of the most visible and transcendental ambits of the drug trafficking phenomenon is the corruption resulting from it. Only through international cooperation will it be possible to confront the criminal manifestations of drug trafficking.

Degrading influence of drugs on children

Justice Jorge Leslie Bodes Torres, President of the Criminal Chamber of the Popular Supreme Tribunal of Cuba, describes the drug situation in Cuba and its evolution. The revision of the criminal code in Cuba went into effect in March 1999 and, among other measures, establishes sanctions against drug trafficking. He notes that the struggle against drugs and, in particular, achieving the healthy development of children require profound changes in the prevalent criteria for drug-related offenses. It also requires proper and decisive policies and serious transformations in the living conditions of the Cuban people. It is impossible to adequately protect minors from the degrading influence of drugs if the delinquency phenomenon is not successfully addressed. He also describes some of the preventive measures to assist minors and their families and the role of citizen associations in these efforts. Justice Bodes concludes that the confrontation of the drug phenomenon and the preservation of a healthy childhood are intimately related to the society's material and spiritual development and its degree of equality and social justice.

The role of bridge countries in drug trade

Justice Armando Figueira Torres Paulo, Vice President of the Supreme Tribunal of Justice of Portugal, asserts that the global drug problem affects, with greater or lesser intensity, all nations and social classes. Drugs endanger social peace, state security, institutional activities, public health, the economy, and even international relations. The seriousness of the problem is so great that many countries consider drug trafficking, consumption, and related crimes to be a question of national security. Justice Torres states that only cooperation among states, based on solid information, can confront the seriousness and complexity of this worldwide scourge. Portugal signed the United Nations Convention against the Illicit Trafficking of Narcotics and Psychotropic Substances of 1988 and introduced in the European Community's budget an allowance aimed at fighting the drug phenomenon. Portugal also published regulations and guidelines for avoiding diversion of certain substances for the illegal manufacturing of narcotics and psychotropic substances and the use
of the financial system for money laundering. Justice Torres urges all states to strengthen their security systems to confront the increasing power of the international trafficking networks. This implies reinforcement of the different police entities and international judicial cooperation on penal matters, particularly in the creation of a supranational criminal court. He points out that in the case of the drug-producing and transit countries, which in general are developing countries, the international community should increase its support to the sustained growth of their economies and encourage the development of the greatest possible number of alternative crops. At the national level, it is essential to combat the supply and discourage the demand for drugs. To conclude Justice Torres asserts that drug addicts should be helped through treatment, not repression.

**Money laundering**

Justice María M. Naveira de Rodón, Associate Judge of the Supreme Tribunal of the Puerto Rico Free Associated State, describes money laundering and suggests several ways to avoid its growth and globalization. Money laundering is the process of concealing the origin of income by giving it a legitimate or legal appearance in form so that the funds may be used without problem in a legitimate economy. She notes that it is a societal problem that affects all countries adversely. Justice Naveira stresses that money laundering is complex and has multiple partial operations, all of which are necessary for its success. There are three essential basic steps—placement, concealment, and integration. Laws to combat money laundering include jail sentences, fines, and the confiscation of property and licenses, all of which are useless unless all countries realize that there is no national sovereignty for money launderers. She urges the judiciaries to limit the concept of traditional sovereignty to efficiently combat money laundering.

**Closing remarks and declaration**

In closing Justice Cecilia Sosa Gómez, President of the Supreme Court of Venezuela, says that all participants would like for the summit to arrive at concrete conclusions and that the follow-up technical unit will ensure compliance with the agreement reached at the first summit. Although the judiciary has traditionally been the most conservative institution in the state, it is now considering new directions on the dynamic route of globalization. With the help of the new network, IUDICIS (Latin for court), which was demonstrated during the Summit, judiciaries in the region and eventually around the world should be able to exchange general and case-specific information daily. She concludes that as judges they are the guardians of society and only together will they transform this utopia of universal justice into a reality.

The summit concluded with an agreement—the Second Caracas Declaration—to maintain the juridical order inspired by the democratic systems of member countries and respect for judicial activities and decisions as a fundamental premise of the validity of the rule of law.
Part 2

Opening and Introductory Remarks
Justice Reform, Social Peace, and Democracy

Sr. Hugo Chavez Frias
President of Venezuela

It would seem—as I mentioned to the President of the Venezuelan Supreme Court—that one of the signs of the times is conflict. History is in great measure also the history of conflicts. In these waning years of the twentieth century, there have been all types of conflicts, many of which were violent and filled with pain, death, and tragedy. There is a profound expression in the Bible that says, “The only road to peace is justice.” From this viewpoint we can conclude that where there is no true justice, there will be no peace. I believe in this maxim.

We acknowledge the efforts of the honorable presidents of supreme courts and tribunals of Ibero-America and the Caribbean in attending these summits on the fundamental problems affecting justice and, by extension, the peace of our peoples. In these two days in Caracas, you will deliberate, discuss, evaluate, prepare projects, and make recommendations on four of these problems. I hope that the time spent here will not be in vain. There have been many summits in the world, some have been stormy and others have faded with the wind.

In the 48 days that I have been in office, I attended the Summit of the Group of Fifteen hosted by our neighbor, Jamaica, where we conversed and analyzed the political, economic, and social situations of “the world of the South” as well as the proposals made by the “world of the North.” In the speech I made on behalf of the presidents of Latin American and Caribbean countries comprising the Group of Fifteen, I expressed a fervent hope that the issues discussed at the summit in Montego Bay would not be carried away by the Caribbean wind. I have that same hope for this Caracas Summit. I also hope that this summit—which we will all monitor—will produce results. A social revolution is underway in Venezuela that is shaking the foundations of the old regime. It has been undermined by some of the vices that you will be analyzing over these next few days, such as corruption, which has destroyed institutions and dissolved the essence of democracy.

The Venezuelan case deserves to be studied because it will teach us to avoid repeating past mistakes. History shows that some violent acts frequently originate from actions of silent violence, which slither quietly like a snake, spreading death, hunger, and desolation to the people. As former President of Venezuela Rafael Caldera said on February 4, 1992, “A hungry population cannot defend democracy.” Similarly, does a population living in hunger live in a democracy? Does a population with a poverty rate of 85 percent living in a territory full of oil, water, and riches live in a democracy? And who will defend them?

The time for democracy in Venezuela has arrived. I hope that you have time to walk along some street in Caracas or Venezuela and speak to common people about democracy, as a type of field work. I invite you to Yare where I was a prisoner. I was there recently and came out crying. I could not stand it, and I told Monseigneur Mario Moronta, “This is too much pain for a single heart.”

The National Constituent Assembly cannot be subordinated to the established powers. The Venezuelan people will no longer tolerate tricks, I am sure; our obligation is to channel the nation’s voice, as the great Honoré Mirabeau said. In Venezuela we must restore the institutions of a pulverized democracy, lay the foundations of a new
republic because the one we have is on its death bed, and rebuild the rule of law, which has been hit one and a thousand times. Around 60 percent—a conservative number—of Venezuelan men and women who are in prison are waiting for due process. Justice is not agile; it only reaches those who can afford it. Is that justice? It is impossible to reestablish the rule of law unless the undermined institutional framework is reformed. An assembly must be directly and universally elected by the people to restructure the government and especially the judiciary.

As President of Venezuela I have received and hold in my hand a social time bomb. We are making gigantic efforts to deactivate the bomb. This social bomb consists of infinite poverty, a destroyed economy, and a stripped society. Some people still want the president to use the armed forces to repress the people whose only desire is justice, housing, and a way of life. While I am President and Commander in Chief of the Armed Forces, not a single soldier will repress a people who seek justice, leadership, and to be heard. The armed forces under my command are with the people in the street today, not to repress them but to join with them in a project—called Bolivar 2000—to stimulate the restitution of the fundamental rights of health, education, food, housing, and immediate attention, however great the need.

In addition to human rights, this is an appropriate time to discuss the problem of drugs and extending joint responsibility in combating production, trafficking, and consumption of drugs. Drug traffickers and poppies flourish among peasants who have no land, credit, or work and who very often have no other source of life or income. Drugs flourish among the street children of Venezuela, almost one million of them. Your recommendations and contributions related to drugs would be very timely.

With these harsh reflections, which are only as harsh as our reality, I warmly welcome you on behalf of our people who, despite their troubles, are optimistic because they again have a renewed purpose in their search for a democratic way of life. In this Venezuela institutions and authorities are committed to making way for the constituent power and a new reality and to respecting democratic values, which are essential to building a new nation.
Reform Challenges in Ibero-America

Justice Cecilia Sosa Gómez
President of the Supreme Court of Justice of Venezuela

I am honored to have this opportunity to cordially welcome you to the second summit of the Caracas Declaration to evaluate compliance with policies and actions on judicial organization, corruption, human rights, and drug trafficking. Our goal is to establish viable multilateral mechanisms to strengthen the judicial branch of Ibero-American states.

On the threshold of the third millennium, the judiciary in each member state of our organization should promote the strengthening of its independence from other branches, insist on the continuing need to be more efficient, and reaffirm the fundamental principles that govern jurisdictional activities and the discipline that should set us apart from other branches.

As key instruments in fulfilling our assigned mission and in view of the growing globalization and integration of nations and individuals, new technologies will assist member countries that are committed to the development of the judicial branch. The financial support of the government and of national and international organizations committed to the development of an efficient administration of justice that is accessible to all citizens is essential.

I must publicly acknowledge the input of the World Bank, which has economically and technically supported the Venezuelan judicial reform process and the summits. The Bank is an international organization committed to change and renewal that, nonetheless, did not arrive with preconceived diagnoses and formulas. This is the first time, in my opinion, that an international organization has had no intention of imposing its ideas, but rather contributed technical professionals, experiences, and economic aid.

At the opening session of last year’s summit I said that traditionally the presidents of supreme courts and tribunals gather to discuss and exchange ideas and experiences about abstract legal topics and their application to specific cases; in other words, we meet to examine the evolution of doctrine and case law and its application to specific juridical institutions. But, for the first time, we are here to discuss and analyze juridical topics that were determined to be important by the heads of state of our countries.

Therefore, at our first summit in March 1998, we reached a consensus about the judiciary’s perception of the definition of policies that will affect the administration of justice, and we outlined and agreed on how they should be treated—from a juridical point of view—during implementation.

We are committed to implementing four principles. The supreme courts and tribunals:

- Must find mechanisms to ensure their independence and protection from interference outside the judiciary.
- Will promote preparation and training mechanisms for judges as well as share lessons learned with the other countries.
- Will fight corruption and adhere to an efficient application of the rules, which will allow for their effective control and sanction. The supreme courts and tribunals of justice will also propose legal amendments or promulgation of laws to the executive and to congress allowing for fair juris-dictional exercise upon those responsible for
serious crimes. Sharing experiences and knowledge in this area is fundamental.

- Will request the promulgation of laws and treaties from other branches of public power, if necessary, which will clearly define narcotic and psychotropic substance use as a crime against humanity.

We concluded the first summit with the Caracas Declaration, with which we all promised to comply.

One year later we convene at the second summit to give an account of our achievements as well as give to each other solidarity and strength to continue performing our commitment to change and modernization of the judiciary. The strengthening of the judiciary in a democratic society requires an extremely clean and ethical administration of justice to ensure that judicial procedure is simple, publicly accessible, fast, efficient, and fair in its decisions.

The agenda reflects our willingness to address concerns and needs by stressing judgment capability and sentence enforcement so that the government can guarantee all citizens the total effectiveness of the rule of law.

This second summit, which includes plenary sessions with trial court judges as observers from the participant countries, will cover the following topics:

- **Judicial organization.** There will be a review of issues related to the efficiency of use and expenditure of the judicial budget to promote common standards that will guarantee the autonomy of the judiciary. There will also be an analysis of judge selection and judicial stability mechanisms, stressing strengths and weaknesses of human resource education and training. These actions will define the standards of the Ibero-American Judicial Public Employee Education and Training School.

- **Corruption.** There will be a review of criteria under discussion for adopting the Code of Ethics of the Ibero-American Judicial Public Employee. We will use a mock trial to illustrate the application of the law in different countries and thus obtain ideas that will allow local judges to manage and apply international tools, such as the Anti-Corruption Treaty, to judicial regulations.

- **Human rights.** The effectiveness of jurisprudence exchange among different countries as well as with the Inter-American Court of Human Rights will be evaluated to determine how instruments and jurisprudence are being applied in sentencing by judges of the region.

- **Illegal drug trade.** The identity of common norms will be evaluated as well as those that can be adapted in a unified way to achieve international standardization of judicial processes and compatibility in the types and penal sanctions by the different judicial systems.

The tasks faced by the supreme courts and tribunals in Ibero-America at this second summit are not simple and are outside the ordinary work of a judge. The tasks require assuming an active role in the solution of the big problems of our societies. Power cooperation goes beyond the formal framework of competence assignments contemplated in constitutions. We are informing our countries that:

- The courts are aware of the great problems affecting the administration of justice on the continent.

- The courts are committed to ethical, democratic principles.

- We have been trying for some time to encourage serious reforms in the administration of justice to make it reliable, efficient, and transparent.

- We are not idly waiting for an external reforming power, rather we are leading reforms from within to match democratic values and norms of society. Equality in democracy translates into the right to follow the correct process.

Our region must use the benefits of world globalization and market integration at the institutional level, but also protect our identities and avoid uniform solutions. International communication among judicial branches would lead to the creation of an information network and an exchange of experiences in the judicial area. In particular it would assist efforts against drug trafficking by informing the follow-up technical unit, which we agreed to create last year.

During this summit we will demonstrate the future judicial information network, which we have called
IUDICIS. The system will allow a permanent exchange between supreme courts and tribunals, promote the education and training of our judges and legal assistants, and make transcending our borders a reality.

Obviously our initiatives will not be mechanical transfers from one society to another. However, the knowledge that we share will be a valuable stimulus for the achievement of a common goal: the construction and reconstruction of a respected and respectable judicial system and a system that is fully legitimate and worthy of confidence, and independent and strong in its devotion to preserving and deepening the basic value of our democratic societies—freedom.

Our supreme courts and tribunals are obliged to inform our heads of state of the results of this second summit, particularly the legislative and political measures necessary for the execution of our agreements.

The problems affecting our continent are solvable by the rule of law and the application of the laws, if the political will exists. We have an obligation to interpret the law so that its application results in justice, but we also have an obligation to show the political sectors the changes that they must make. The executive and congress must agree to clear the way for a true democracy that ensures social peace and the sustained economic growth to provide a good quality of life. We must call for a rejection of the use of force as a mechanism for the solution of national and international disputes.
Legal and Judicial Reform: Lessons of Experience and the Bank's Future Role

Andrés Rigo Sureda
Acting Vice President and General Counsel, Legal Department, World Bank

On behalf of Mr. James Wolfensohn, President of the World Bank, I wish to express my appreciation to the President of Venezuela, Sr. Hugo Chavez, and the President of the Supreme Court of Venezuela, Justice Cecilia Sosa, for their invitation to participate in this very important event. The Bank would like to congratulate you and all the countries represented at this meeting for taking this initiative to share knowledge and advance the process of legal and judicial system reform in the region—an ambitious undertaking with wide-ranging implications for development.

This afternoon I will first discuss the Bank's perspective on the importance of effective judicial systems for social and economic development. I will then present the main challenges and opportunities in strengthening the legal and judicial system and share some of the Bank's experiences and lessons. I will close with a brief outline of the main principles of Bank assistance for strengthening institutions and policies pertaining to the legal and judicial system.

Importance of an effective judicial system in development

The importance of a well-functioning legal and judicial system to social and economic development has increasingly been recognized by the Bank and its member countries, not only in the context of strengthening the administration of justice but also in connection with economic and social reforms and, especially lately, economic crises around the globe. President Wolfensohn sees an effective legal and justice system as one of the key pillars of the proposed Comprehensive Development Framework, which he presented to the Bank's Board in January this year and in which he propounded a more inclusive approach to development. The purpose of the Framework is to balance traditional macroeconomic considerations with the basic structural, social, and human prerequisites for sustainable growth and poverty alleviation. In the Framework he explains:

without the protection of human and property rights and a comprehensive framework of laws, no equitable development is possible. A government must ensure that it has effective systems of property, contact, labor, bankruptcy, commercial codes, personal rights laws, and other elements of a comprehensive legal system that is effectively, impartially, and cleanly administered by a well-functioning, impartial, and honest judicial and legal system.

Initially the Bank and member countries saw legal and judicial reform largely as part of the enabling environment for economic growth. This view is now broadening as the development community and governments increasingly recognize the role of the legal and judicial system in strengthening good and clean governance as well as supporting sustainable development.

Challenges and opportunities for strengthening legal and judicial systems

Legal and judicial systems worldwide are confronting challenges—challenges relating to poverty,
globalization, crime, trade, technology, corruption, migration, urbanization, conflicts, and democratization. In Eastern Europe and former Soviet bloc countries the challenge is how to reorient the court system to promote economic reform and democratization while gaining the trust of citizens. In South Asia a key challenge involves how to tighten legal and judicial oversight and control in financial systems and social programs. Issues in Africa include civil strife, weak capacities, and the creation of best environment for private investment. In the Middle East and North Africa legal traditions need to be refined and made more relevant to the economic aspirations of the countries. In Latin America and the Caribbean reorienting the role of the state and increasing social demands and attention to human rights, including the rights of indigenous peoples, are among the key issues. In some regions—both industrial and developing—increased costs, the complexity of disputes, and the role of the media are attracting increased attention. In some countries the failure of legal systems has resulted in a breakdown of basic law and order and governance. In particular, the fragile peace in many post-conflict countries is threatened by the lack of effective legal systems.

When we talk about strengthening the legal and judicial systems, we are addressing a range of systemic and sectoral issues. While the problems and challenges vary from one country to another, two sets of issues are common to many:

- **Problems of authority, legitimacy, and compliance,** especially in countries without a strong tradition of an independent judiciary. Modernizing economies have often eroded the power of traditional sources of authority—families, religious institutions, and community leaders. The process of change and adaptation can lead to clashes between sources of authority and legitimacy, at times reflected in violence.
- **Problems of ineffective judicial systems.** Formal judicial institutions are a cornerstone of any legal system, but chronic delays, weak user confidence, poor access, corruption, and failing facilities and capacity are affecting their performance. These issues are compounded by the lack of suitable best practice models because judicial systems vary from one country to another.

While challenges are formidable, the opportunities for addressing the challenges have never been greater. Broad economic and political reforms, the end of the Cold War, technological advances, and greater cultural understanding have led to increased awareness and understanding of the importance of legal and judicial systems. This summit is indeed a reflection of this emerging awareness.

### The World Bank's role: activities and lessons of experience

The World Bank's activities to strengthen institutions and policies affecting legal and judicial systems have grown markedly in the past few years. The Bank has prepared 10 free-standing judicial reform operations that have been approved by the Board, and another 14 are currently under preparation. In addition, 15 other projects address legal and judicial issues from a broad systemic perspective, such as reforms of the law-making process and the judiciary and alternative dispute resolution mechanisms. Beyond that, there are some 350 operations in 87 countries that finance specific legal reform activities.

The Bank and other development finance institutions and international organizations have now been involved in legal and judicial reform long enough for us to derive some lessons, such as:

- **Country ownership and commitment are critical for successful institutional and policy reform.** Commitment is required not only from the organizations directly involved in the legal system, such as the judicial councils and the ministries of justice, but also from the ministry of finance, which provides public financing to these organizations, and from users of the system, such as the private sector and civil society. Sustained reform requires many champions.
- **Technocratic one-size-fits-all approaches to law and development fail to capture the rich diversity of local traditions and institutional settings.** Thus good legal and judicial reform require a high degree of country-specific knowledge and a bottom-up approach involving all stakeholders.
• Because of the social, political, economic, and institution dimensions of systemic institutional and policy reform in the judiciary, multidisciplinary teams are needed to prepare strategies for reform.
• Reforms need to be designed within a comprehensive, holistic framework and strategy and the pieces need to be mutually reinforcing.
• The pace of reform needs to match available capacity and activities need to be appropriately sequenced so that the reforms are self-reinforcing.
• There must be an appropriate balance between state-provided and other mechanisms for dispute resolution such as arbitration. Well-designed fee structures and procedural rules should provide appropriate incentives for the use (or avoidance) of courts.
• The underprivileged, such as women, children, and the poor, need to be ensured equal access to justice.
• Donor coordination is key. Where many donors are involved, close coordination is needed to benefit from the comparative advantages of each donor and to share information about programs in a more systematic manner to avoid duplicating effort.

The new approach and the Bank's future role

From this experience a new approach to legal and judicial reform has begun to take shape. The approach is inclusive, goes beyond formal legislation, is country-driven, and is carried out in collaboration with teams of professionals and members of civil society. It draws on interdisciplinary skills and does not seek to impose predetermined models. It is culturally sensitive and looks for effective solutions.

As part of such an approach, the Bank is:

• Developing assistance programs that seek to marry initiatives in legal and judicial reforms with commensurate efforts to identify and address problems of corruption in public life and related shortcomings in governance.
• Building and supporting global and regional networks and partnerships—like the one you are planning to form among judiciaries—that facilitate dialogue. The rich experience that exists all over the globe needs to be shared. The Bank will support knowledge management initiatives to make this possible, such as the development of networks of supreme courts.
• Conducting research into institutional, policy, and operations aspects of legal and judicial reform that will serve to enrich the substance of Bank assistance in this field. Your ideas on these matters will be deeply appreciated.

Through your collective thinking, knowledge, and leadership and the participation of the civil society we will meet the institutional and policy challenges of strengthening the legal and judicial systems. In that way we will be contributing to the betterment of all in a world of inclusive justice and freedom from poverty.
Part 3

Judicial Organization: Toward Reform
Autonomy and Budgetary Independence and Education in Ibero-America

Justice Cecilia Sosa Gómez
President of the Supreme Court of Justice of Venezuela (for Justice Arturo Hoyas, President of the Supreme Court of Panama)

The procedure for this session and all other sessions is to have one of us give a brief presentation of each topic and then to allow the members of the discussion group to begin the debate. The goal is to channel ideas and conclusions related to the topic under discussion, which addresses the autonomy and independence of the judiciary in general and the topic of budgetary autonomy and independence specifically.

We have examined “Autonomy and Budgetary Independence” and the other papers that address summit topics. There are several points in “Autonomy and Budgetary Independence” that will allow us to evaluate the problems inherent to this topic in each of our countries. In addition, there are a number of proposals and conclusions for which I ask members of the discussion group to recommend guidelines, replacements, or corrections. This will add dynamism to achieving unity and strength among our supreme courts and tribunals.

With regard to budgetary concerns, there is a significant relationship between the independence of the judiciary and the resources available to carry out judicial programs and activities. The national treasury is an element that, while a part of a budgetary principle recognized in all our countries, nonetheless needs to be examined in light of our independence and budgetary autonomy. Many of our countries recognize in constitutional and other legal provisions the budgetary autonomy and independence of the judiciary using either a percentage of the national budget or some other approach; for example, the budget estimates of the judiciary cannot be changed by the executive branch but by congress. This is another mechanism that attempts to guarantee noninterference in the judiciary by the other branches of government. However, often not even such a constitutional provision is sufficient to maintain or defend the budgetary estimates that the judiciary presents for consideration by the executive branch or congress.

An important tendency in the information received from the Follow-up Technical Unit shows that even though the judiciary is guaranteed a percentage and budgetary autonomy, the systems of budgetary planning continue to be marked by criteria established for the executive branch. The proposals to safeguard our budgetary autonomy and independence must be based on an effort to create our own systems and mechanisms of budgetary or judicial planning to guarantee our autonomy. Our costs are represented by allocations for wages—for judges, secretaries, bailiffs, assistants, and administrative personnel—and the services, equipment, and supplies for judicial buildings. These expenses have no counterpart in the quantification of investment, which is the traditional concept of a budget. Therefore, although last year we agreed that we wanted a budget adjusted to the needs of the administration of justice and independence based on the recognition of our autonomy and budgetary formulation, we now must find mechanisms that test the efficiency of the cost of the administration of justice.

Our efficiency should not only be valued by the volume of decisions made in the judicial system but by other factors that demonstrate a good return on our resources. The budget should contain not only statistics on judicial results but also on programs that are not necessarily directly
linked to the product of the judicial system, which is to issue decisions.

To defend a budget in congress or to the executive branch, we need an investment in justice that produces a common methodology. We must be guided by four fundamental parameters—good management, planning, reporting, and control of budgetary execution. First, we have to learn to be good managers. Second, we have to plan beyond the custom of complying with a budget this year and next year complying with this year's budget, which means we keep something back for programs or initiatives because we are conditioned to expect that our budget will always be cut and never increased. Instead we must prepare the budget with a longer-term strategic approach. This and other topics will be covered over the next two days.
Discussion on “Autonomy and Budgetary Independence and Education in Ibero-America”

Justice Jorge Subero Isa

The budget will be one of the most important topics to be addressed during this summit because a justice system cannot work without the backing of a suitable budget.

Most Ibero-American countries have a fundamental problem—the yearly discussion of the part of the national budget to be assigned to the judiciary. In the Dominican Republic, even though the Constitution establishes the budget and financial autonomy of the judiciary, the judiciary must prepare the budget annually and present it to the executive branch, which presents it to congress for its approval or refusal. The problem is that both the executive branch and the National Congress make cuts in our budget.

If the judiciary budget continues to depend on political power, without any preestablished criteria, we will continue suffering from the same problems. The best way to establish financing criteria for the judiciary, without a major intervention of the political power, is through a fixed percentage of the national budget.

Justice Alba Luz Ramos Vanegas

The legal framework for formulating and executing the budget in Nicaragua is the Constitution, under Budget Law and Organic Law of the Judiciary. The foundations for the financial and economic independence of the judiciary are established in Article 159. The judiciary will not receive less than 4 percent of the Republic’s general budget, and there will be Courts of Appeal and District and local judges whose organization and operation will be regulated by the law. It is also established that the judicial career will be well-regulated by the law.

However, the Constitution also establishes that the executive branch must formulate the Republic’s general budget and present it for consideration to the National Assembly. This is where the first discussion on these constitutional provisions emerges. However, the judiciary can change the distribution without altering the budgetary ceiling.

I am going to outline the main provisions in the Budget Law on budget execution in reference to the presidents of the judicial and legislative branches. They are responsible for the execution of their respective budgets and have the power to distribute the total budget in accordance to their own criteria. Article 30 allows the General Budget Office to use the monthly installment system for the distribution of funds, equivalent to one-twelfth of the budget amount approved by the judicial and legislative branches and the electorate.

Article 84 of the Organic Law states that in accordance to the Constitution, the judiciary’s annual budget will not be smaller than 4 percent of the Republic’s general budget. The Supreme Court’s administrative committee develops the preliminary budget for approval by the Court in full session and later for presentation to the Ministry of Finance to include in the budget.

Article 85 of the Organic Law establishes that the Supreme Court of Justice is responsible for authorizing the proper use of the budgetary item, and Article 87 establishes that the administration committee of the judiciary supervises the budget’s execution.
Judicial Challenges in the New Millennium

The coherent application and interpretation of these regulations can hinder guaranteeing a budget that is adjusted to the true needs of the judiciary; although the Budget Law and the Constitution grant autonomy for the execution and formulation of our budget, the executive presumes that the judicial budget should never exceed 4 percent, regardless of need. For example, the judiciary has developed a budget equivalent to 384.5 million córdobas, which is equivalent to 6 percent of the Republic's general budget, but the executive branch has determined that it cannot exceed 260 million córdobas, which corresponds exactly with the General Budget of Ordinary Earnings.

These are the main problems we encounter in the formulation of our budget. In accordance with the policies and actions determined in the Declaration of Caracas, we have defined policies, objectives, and goals for the material needs and human resources for the administrative and judicial units of the judiciary. We gather and consolidate the information collected from the administrative judicial units. We analyze the request, compare it with last year's expense to adjust to the policies and objectives of the institution, and submit it for consideration to the administrative committee and the Supreme Court in full session before it is sent to the Finance Ministry.

The execution of the Supreme Court budget follows the following process. The budget, approved by the National Assembly, is received by the Court either through a centralized fund or a decentralized fund. A centralized fund corresponds to tax payroll, salary, seniority, and insurance, which is administered and executed by the Ministry of Finance. The decentralized fund correspond to operative expenses, nonpersonal service, and materials and supplies from a current transfer. The judiciary received 97.85 percent of its 1998 requested budget.

Analyzing the approved and executed 1998 budget of the judiciary, we had a 97.85 percent execution; the 2.15 percent budget difference corresponds to the budgetary item that the Ministry of Finance failed to give to the Supreme Court of Justice, these are savings obtained in the payroll area, which they manage in a centralized fashion. In some other areas we managed to make some savings due to our autonomy in the internal distribution of the budget; we applied them to other sensitive items of the Supreme Court, such as investment, and used them to cover the personal services deficit corresponding to personnel payments other than payroll.

This is an overview of Nicaragua's experience in budgetary execution since the March 1998 Caracas Declaration.

Justice Jorge Eduardo Tenorio

As we have seen, the budget greatly influences the autonomy and independence of the judiciary. The Ministry of Finance has a series of fiscal instruments with which it can define or limit budgetary independence. For example, with regard to cash handling, a delayed disbursement can qualify as a cutback. There are two possibilities or approaches to the execution and independence of budgetary management. The assembly can introduce adjustments prior to consultation. However, prior consultation means only listening and making decisions according to what has already been foreseen following political patterns. The other approach uses the executive branch fiscal instruments through the Secretariat of Finance.

There are other aspects that affect budgetary development. For example, civil society argues that the efficiency of judicial services does not reflect the investment in justice. For countries with very serious economic and social problems any percentage will be high. Another tendency is that this minimum percentage usually remains unchangeable. We have been unable to increase the 6 percent, even if the judicial system requirements have grown and an increase has been justifiable. But more importantly the restrictions affect the judiciary's independence. As a result, judicial decisions risk being manipulated by political interests.

The most important issue is not only obtaining a minimum of the budget but legitimizing it through an efficient organization. This is a great concern but this meeting will yield good conclusions and good resources.

Justice Raúl José Alonso

Although the judiciary in Uruguay is largely independent, it can practically manage all the resources and staff assigned to it. All of us who are presidents or ministers of the Supreme Court are aware of the finances and how they weigh on the performance of our service.
In Uruguay the judiciary has a right of initiative in the budget but remains under the arbitrage of the Parliament, which always reduces the amount that the Judiciary requests. The judiciary, in turn, is prudent and never asks for what is really needed. This conflict is so deeply felt that the Supreme Court has requested modifications to include in some constitutional reforms over the past several years but without success.

Uruguay's Judicial Officers Association, the Bar, and the University of Uruguay are collecting signatures for a plebiscite in the next elections on reforming the requirements of the judicial branch's budget. It is important for the judiciary to have a relatively wide margin in financing service without pretending to exceed the real economic capacity of each of our countries. In Uruguay the judiciary always receives less than 2 percent of the budget, which is not low considering Uruguay's budget has traditionally been very high but is insufficient for improving the service.

However, we in the judiciary do have the right to manage the budget, make transfers, create positions, and modify allocations, provided we do not exceed the total. This arrangement provides great adjustment capacity to new circumstances and handling of service organization totally independent from the political power. The management of the judiciary with few or no hindrances is an important topic that should be discussed in the conclusions.

**Justice Carlos Mario Velloso**

The Brazilian Constitution confers certain guarantees of independence to the courts and within these guarantees the courts have administrative and financial autonomy. Therefore they practice self-governance, elaborate their regulations, and nominate their civil servants.

In Brazil there is national justice and state justice. The Supreme Federal Tribunal—Brazil's constitutional court—is the head of the judicial system and five high courts constitute the leaders—the High Court of Common Justice, the Electorate High Court, the Labor High Court, the Leading Labor Court, and a Military High court, which is the leader of military justice. Member states have justice courts and legal judges. The Appellate Courts of Common Federal Justice are the Regional Federal Courts, the Second Appellate Court of Labor Justice, the Regional Labor Courts, and the Appellate Court of Electorate Justice. All those courts have administrative and financial autonomy. The Supreme Federal Tribunal is charged with the elaboration of its budgetary proposal and forwarding it to the government institutions.

The Supreme Federal Tribunal signs jurisprudence and sends the budgetary proposals to the executive branch, which cannot reduce the budget proposals. There is a law of budgetary guidelines to be observed in the elaboration of those budgets. The Supreme Federal Tribunal has decided that the National Congress can reduce budgets related to federal budgets. The state legislative assemblies can reduce state budgets.

Using their autonomy, some member states have established limits for the state judiciary. For example, Paraná chose 5 percent of its gross income as the limit. Other states followed suit. The courts, however, challenged the constitutionality of states fixing budget limits and the Supreme Federal Tribunal agreed that it was unconstitutional.

Budget management and planning are also being discussed in Brazil. There are proposals suggesting that an organ of the judiciary centralize budgetary proposals, thereby giving budgetary autonomy to the judiciary and not the courts. Such a proposal is being discussed in Brazil in the National Congress and the high courts. A judiciary National Council may soon administer proposals, receive the courts, and elaborate the budget. This idea has become polemic because each court is autonomous and none would like to lose autonomy.

**Justice Julio Salvador Nazareno**

I believe that more than 10 Latin American country budgets are managed by a judiciary council. At the end of last year Argentina incorporated a judiciary council responsible for the administration of the nation's judiciary budget. The Court elaborates its budget as head of the judiciary branch, sends it to the Judiciary Council where it is considered, receives remarks, and may or may not return to the Court for approval. The Council's Administrative Court will be the one to administer the judiciary's
funds; there is always a shortfall. The Chief Justice of the Court is, in turn, the President of the Judiciary Council. This is a difficult situation because those bodies at times take opposite sides. Represented on the Council are eight congressmen, two academicians, and four judges; consequently, this new Judiciary Council will have funds to administer to the jurisdictions of the country.

I am not criticizing the Council, but it is responsible for distributing funds to each of the court jurisdictions. Therefore, it is open to scrutiny. The Judiciary Council is already in place in most countries. Following the European tradition—Italian, Spanish, German—it has now been imposed on us here in Latin America. But I do not want to be an alarmist.

The judicial branch does not have control over distribution of its funds in Argentina, rather funds are distributed by the Judiciary Council consisting of politicians and academicians that are not of the Judicial branch. There will always be shortfalls and insufficient funds to cover all our needs. However, if the head of the judiciary will not be handling the funds clear and concise rules for such participation must be established.

Justice María M. Naveira de Rodón

As in Argentina, we are also concerned about budget distribution. In Puerto Rico, the chief justice handles the budget through a centralized administration. The legislature, however, has the power to allot certain funds to specific projects so that we cannot touch items of this type. Internal budget handling is essential for an appropriate judicial policy. We are best able to determine our needs for the future, and usually other factors, which are considered and handled by the executive and legislative branches, do not come into play.

Puerto Rico’s Constitution allows the executive to create judicial seats (courts) that have generated a series of problems because the criteria are political and often certain courts are established for reasons quite different from purely judicial needs. A result, our budgets have to cover those courts that have been created and that possibly may be of little or no use to the judicial system.

We recently passed a statute to require that revenue stamps be affixed to documents sent to the courts. The money from the sale of those stamps goes directly to the budget of the judicial branch and not into the general budget. We are now allowed to grant loans to the government bank using that money as collateral, allowing flexibility between budgets. We are testing this modality now so I cannot tell you whether it will work well or whether it will function poorly. As in many cases, the funds that we are assigned by the executive and that are approved by the legislature are insufficient for our needs.

Justice Oscar Aramando Avila

In Honduras we experience budget constraints daily. We have broad powers for preparing and distributing the budget, but ultimately the executive and legislative branches determine our budget. Although the Constitution specifies that the judiciary should receive at least 3 percent of the national budget, we receive only 2.12 percent, which does not satisfy our needs. We are concerned by the incorporation of oral hearings into criminal cases because it would require more court buildings, which we cannot afford to build unless our budget is increased. Lack of sufficient funds to improve our performance and increase our salaries is another serious problem in Honduras.

In Honduras we sometimes encounter problems generated by the creation of new courts. The power to create courts in Honduras is a power that belongs to the legislative branch. The legislature creates them but does not increase our budget. We have asked Congress to give us that power over our needs, but our request has been denied.

I have discussed the Judiciary Council with colleagues and some are quite concerned that the Council will take away our independence. We should agree to prepare an in-depth study on this matter and voice our reservations because almost all international organizations and studies are leading us toward a judiciary councils. It is difficult for chief justices to manage both the administration and oversight of the juridical structure. Another mechanism must be found, one in which the judicial branch manages its own assets and the chief justice handles oversight.

Justice Armando Figueira Torres Paulo

Portugal is among the countries in which judges are truly independent. For example, the chief justice and
the deputy justices are elected by the 80 judges constituting the Supreme Court. There are 80 to 82 judges and only 60 are working in the Supreme Court because 22 are assigned to service-related commissions. In the event of any type of serious government problem, a Supreme Court justice is immediately called to serve on a specific commission. For example, in the case of the appellate courts the chief and deputy justices are also elected by the respective judges and we have a body that is the superior council of the judiciary, the body in charge of self-governing the judicial branch. This is the body that will classify, inspect, promote, and transfer all judges and is consisting of judges that are elected by other judges and the Congress.

The executive branch has no function within the judicial branch except in the financial area. Each court from the lowest to the Supreme Court has its own budget, but it is a limited budget so that the expense is more or less predictable. If, for example, Portugal were to be invited to host a conference like this one, the Supreme Court would have to request the required additional funds from the Minister of Justice. Consequently, the Minister of Justice has authority in financial matters, which I have learned here today. As a result, I no longer consider myself to be as independent as I did before sharing ideas with you.

Justice Orlando Aguirre Gómez

Economic independence is an indispensable condition if the administration of justice is to exist. In Costa Rica we have had budgetary autonomy and administrative independence in the judicial branch since 1959. I believe that this has been very important for the development of the judiciary as an important element of governance in our country.

Although many Latin American countries have made important strides in this direction, we should continue to insist on this direction. There are many factors that threaten this form of organization for the judicial branch. The administration of justice is an important element in the peaceful coexistence of our people. Politicians in Costa Rica are allotting the 6 percent of the budget that we used to receive to other activities. For example, the office of the government attorney and its immense structure, including the Criminal Investigation Department, national security, and other areas, have been progressively transferred to the judicial branch. We need to be more careful.

Another aspect addressed here today that merits stressing is the danger of a loss of prestige by the judicial branch if it does not have sufficient autonomy to manage and administer its own budget and generate results. Conversely, to achieve economic and administrative independence implies a commitment by all of us work efficiently. I believe that the mechanisms that Justice Sosa Gómez recommended are ideal—good planning, management, and statistics to demonstrate our efficiency.

Justice Enrique Antonio Sosa Elizeche

We have similar financial problems in Paraguay. The Constitution establishes a minimum of 3 percent of the national budget that must go to the judiciary, which is commonly considered a ceiling. It has been and is still very difficult for us even to obtain this minimum percentage, despite all our efforts, but we are gradually obtaining recognition by the legislative branch to which we present our proposed annual budget.

The problem is that the Supreme Court has both administrative and jurisdictional functions. The Constitution states that the Court is responsible for superintending the judiciary, which removes the danger of transferring this function to bodies outside the judiciary because it would violate a constitutional provision. However, the task of administration for the Supreme Court is an arduous one. We are therefore also analyzing and studying a system of management under the supervision and control of the Supreme Court through a body that forms part of the judiciary.

The problem of the budget is the need to respect the proposed distribution of budgetary allocations. The Supreme Court has to state its needs but these are not always taken into account by Congress if they are distributed in a way that is not in accord with stated needs. We believe it is desirable that even the distribution of the percentage of the general budget earmarked for the judiciary be done by the Supreme Court, which knows the needs of the organization of the system of justice. With respect to financial resources the Constitution establishes a minimum percentage for the judiciary and bud-
getary autonomy to guarantee the absolute independence of the judiciary with respect to its jurisdictional activity.

The judiciary in Paraguay has its own revenue from judicial taxes and charges. The Supreme Court is now attempting to take over the management of this revenue, which is very important for some projects, particularly infrastructure projects. As for other sources of revenue, funds from the Treasury are available but difficult to obtain.

**Dr. Bruno Otero**

According to the Spanish Constitution the General Council of the judicial governs the judiciary and its president—as in Argentina—is also president of the Supreme Tribunal. It has 20 members, of which I am one; 12 are appointed from among the judges and 8 from distinguished jurists. These appointments are made by the Parliament of Spain, which represents popular sovereignty.

On the budget question, if a minimum of 3 percent is set, the budget is never increased and in some cases, as mentioned by other speakers, does not even reach that minimum. We have to fight every year to get the funds, as all institutions must do.

As a member of the Council of the judiciary I advocate an independent and ideal budget for the judiciary. However, our starting point must reflect the needs of Spain and of the European Union. When making the budget: the European Union gives specific instructions to governments about limits on public spending. This is the social reality we must recognize to keep our feet on the ground.

How do we make our budget? The budget has several chapters; the first relates to the salaries of personnel of the Council of the judiciary and its officials, not including the judges in the councils. The second chapter covers judicial training and spending on the judicial school in Barcelona and international cooperation, including an Ibero-American section. The third chapter relates to the Judicial Documentation Center (Cendoj), which collects all legislation and case law. I have ordered two CD-ROMs with all this information for this organization and for the International Court of Human Rights.

Judges’ salaries in Spain are decided by the government. Currently, there is talk of raising their pay, based on the report of the Council of the judiciary, which in turn represents the claims of the judicial associations. This is a network that starts from the bottom up and eventually produces a pay claim that is sent to the government for consideration. Usually the government tells the judges they must accept a more or less standardized raise. However, judges are subject to special circumstances because of their incompatibility in the exercise of a series of functions. As a member of the General Council of the judiciary, I would like the Council to have the power to set judges’ salaries. This would solve the problems we have today with the judges, whose pay should be put on a dignified basis.

In this respect, I understand that—at least for now—all the judiciaries represented here have to cohabit with their governments, there is no other solution. I am going to propose something in this respect. In Spain the budget of the General Council of the judiciary has absolute independence in planning its budget, which is then sent to the Ministry of Economy and Finance. If the ministry does not object to the budget proposal it is included in the general state budget and sent to Parliament.

The Parliament on many occasions tells us that the budgetary allocation exceeds the rise in public spending allowed by the European Union. If the Ministry agrees, it sends the proposal to Parliament and defends it there as representative of the Treasury. If there is no agreement, it is sent back to us for any changes, which we may or may not decide to do. Then we have to defend it in Parliament. Clearly absolute independence and autonomy in the management of the budget must be our goal...

**Justice Fernando Enrique Arboleda Ripoll**

In the constitutional model of Columbia the budgetary autonomy and independence of the judiciary is deficient. The initiative of preparing the budget is in the hands of the Superior Council of the judiciary, which has to reach an agreement with the other bodies constituting this branch of government, as well as planning and evaluating needs to present the draft budget for the sector to Congress. During deliberations the legislature establishes priorities that define whether the demands of the judicial branch will be accepted. Experts are con-
cerned with the effects of how this situation is affecting the budget restrictions on the judiciary; the country is in a deep fiscal crisis. As a result the judicial system has reconfigured itself. Vacancies in the judiciary have forced the Superior Council of the judiciary to eliminate posts and even change the specialty of the judges.

The most dramatic result of reconfiguration is the creation of the Commission of Rationalization of Public Spending, which has recommended no budget increase for the judiciary for the next three years. The Commission has established that the performance of the judicial apparatus does not respond to the social expectations. But the Commission's statistics contrast with those of the Superior Council of the judiciary and the National University. This situation can only occur because the ideal of budgetary autonomy has not been achieved and the judiciary's initiatives in this field are not respected when the legislative branch defines the General Budget Law for the year in question.

Justice Cecilia Sosa Gómez

Many ideas and proposals have been made in the discussion groups that could lead to conclusions on budget issues. I would like to add some remarks to what we have heard based on the working document and on the results of the session itself. I refer to the evaluation of the work of the judiciary in our countries, which is normally evaluated by the volume of decisions produced by the system, not by the volume of cases that enter the courts. For this reason, I want to stress the need to improve the statistics.

Second, it is very important that we be aware that the problem of the capacity to respond to the caseload of our courts is also a product of laws that overload the judicial structure. Once laws are passed their economic impact on the judicial system is never evaluated. A good proposal in this respect would be that when the parliaments or congresses of our countries pass laws that grant specific authority to any of our courts, they quantify the impact that their decision will have on the judicial system.

Third, our working document has two parts: the budget and mechanisms for selecting judges and providing judicial stability. I want to propose that because the commitment we made was to prepare a study on the application of the mechanisms of selection of judges and the judicial career in participating countries, we agree to conclude the contribution to the Follow-up Technical Unit so that the study receives all the required information.

At the technical meeting held in Caracas last year, we discussed setting guidelines for the School of Training and Preparation of Ibero-American Judicial Officials, which appears as a conclusion on page nine of the working document. I request that the delegates evaluate the guidelines and present any considerations to the Secretary so that it is not left as if no statement was made on the matter.
In Brazil we have made great strides in judicial information systems. In some countries the judiciary has jurisdictional monopoly, while in others there is no monopoly, as in France, for example. Following the U.S. model, the judiciary has a monopoly of jurisdictional functions. The 1988 Constitution eases the entrance or the access to justice. Judicial processes and their solutions are based on preexisting procedural laws. They are tools, and we are adopting information systems as an additional tool.

There has been an explosion in the number of tried cases in Brazil. In 1998 the Supreme Court—consisting of 10 justices and 1 chief justice—tried about 50,000 cases. The Superior Court, the top court for common federal and state justice consisting of 33 judges, ruled close to 100,000 appeals. The Labor Superior Court has about 116,000 case files and 27 justices. The TSE, the top of electoral justice, has close to 4,000 cases and 7 justices. Military justice has more than 600 cases and 15 justices. Almost 80 percent of the 50,000 Supreme Court cases are repeat cases.

Information systems in the Brazilian judiciary were first used in 1974 in the Regional Electoral Court of Minas Gerais. In 1985–86, when the National Constituent Assembly was elected, the electoral justice organized the largest registry of the continent. It registered 70 million voters. During the 1994 elections for the presidency of the Republic, state governors, deputies, and senators the total votes—in a country of 100 million voters—was successfully counted with the help of computers. By 1996 almost one-third of the Brazilian electorate, or 35 million, cast a computerized vote. In 1998 almost 90 million of 106 registered voters voted in the election, 60 percent of whom cast a computerized vote. The same evening of the election Brazilians knew the name of the newly elected President and governors.

Soon after information systems were introduced in the electoral court, they were introduced in state and federal courts. The use of computers has eased the workload for many people and reduced the need to request services from notary public offices or secretary offices.

In sum, the following are the services provided by the Brazilian judicial information systems:

- **Case follow-up.** A system that allows the follow-up of cases with controls or physical removal of warrants and procedural phases from the registration in the protocol of entry in the Court until its entry into the files or its return to the originating entity.
- **Textual treatment.** A system that allows the generation and follow-up of all procedural documents, such as reports, votes, court orders, and amendments. The final product is the setting of the dialogue of justice, which can even be made available through the Internet.
- **Textual retrieval.** A system that allows users to investigate jurisprudence, court orders, and actions in the textual foundations of the court.
- **Legal foundations of legislation.** A system made available to consult the legal foundations of legislation of the higher courts that allows immediate consultation for judges and attorneys from their own computers.
- **Juridical information.** Information service that allows for consultations online of all federal leg-
islation, including rules and regulations that will support decisions on public services.

- **Virtual office.** A service that allows magistrates, mainly from the Federal Supreme Court, to access the court’s internal network from their own homes or local phones.

- **Statistics.** A system that allows the development of statistics on the amount of distributed and tried cases by class and subject matter in a fixed period. It facilitates the access for external users to procedural and institutional information from the courts.

- **Management of materials and services.** A system allowing the control of the material stock, as well as automatic request and registration for materials from different areas of the court.

- **Human resource management.** System used for the registration, control, and retrieval of information about servers, agreements, benefits, training, and budget management.

In Brazil all networks are integrated. For example, the Federal Supreme Court is connected to the network of the High Court of Justice, Electoral High Court, the Labor High Court, the Military High Court, and the regional Electoral Courts.

Information about decisions and jurisprudence of all these courts are shared. Information systems are a useful tool for the execution of justice.

We can, for example, plan ahead via the computer, we can make the de facto distribution, the attorney presents the request at the secretary’s office of the corresponding court, the computer makes the de facto distribution, designates an audience, issues the summons or letter of summons.

I will conclude by telling you about an experience I had with electoral voting. A new voting machine—Tupiniquim—has been developed in Brazil that facilitates voting for the blind (it includes a Braille keyboard) and the illiterate. In 1996 during the first elections in which the new machine was used, I had finished casting my vote in Belo Horizonte when a partially illiterate woman approached me. She told me that she had just voted for the first time; I asked why, and she replied, “I don’t know how to read or write but I know numbers from working and shopping. So I chose my candidate’s number and his picture appeared on the screen. I was then certain of voting for my candidate.”

This type of experience legitimizes the system of representative democracy that we practice.
Justice Héctor Romero Parducci was unable to attend the summit to make a presentation on judicial discipline. The following paper reflects his comments and observations on the subject.

A discussion of judicial discipline should focus on the comprehensive behavior of judicial officials, both professional and ethical, and on their responsibility for society in general and defendants in particular. Judicial officials must meet their commitment to guarantee a transparent and permanent propriety in all areas of judicial responsibility, a propriety that is inherent in such high responsibility.

If discipline depends administratively on elements and hierarchies with different, similar, or shared responsibilities, it falls on all officials and employees of the judicial system to give special attention to the fulfillment of all legal obligations and ethical postulates in the exercise of their duties. The judicial system must also recognize that those in charge of initiating and applying judicial discipline have the same moral and intellectual authority as those who exercise it.

Propriety is a characteristic of the judicial system, along with ethical and moral principles that should sustain it. Thus close attention to those principles is a daily practical task that should be carried out with a sense of service that is effective, timely, and transparent. All these principles are inseparable from public and judicial service. The results of the actions of judges, courts, and magistrates converge and enlighten the administration of justice.

We should take advantage of the responsible and experienced human resources that are available in our countries and work to strengthen the skills of existing staff and to ensure rigorous selection of new judicial officials. In short, we should facilitate the comprehensive education of the populace so that we will have suitable candidates for public administration in general, and the judicial function in particular. This should include education and training in ethics to achieve the professional stature of judicial officials, backed by academic training and experience in law, so as to guarantee the proper administration of justice in all jurisdictions.

For this reason every act or omission that compromises or contravenes the legal or regulatory precepts or administrative provisions must be subject to the disciplinary regime. These acts include unjustified absences from work, lack of discipline, the performance of activities not relevant to the judiciary, refusal to or delays in the performance of office duties, direct or indirect requests for favors, and bribery. These and other wrongdoings should give rise to disciplinary actions—such as admonition, suspension, removal, or dismissal from office. The dominant purpose of judicial discipline, as a controlling and disciplinary function, is to establish an effective, honest, and transparent judicial operating system.

Obviously, we cannot ignore the latent reality in our courts, from subtle nuances of impropriety in some cases to bold nuances in others. In light of this situation we strive to substitute integrity and honesty for these deficiencies, even if reaching this objective takes a long time. The presence of vice in the daily practice of our judicial tasks cannot be concealed with words. On the contrary, we have to recognize and commit ourselves to carrying out
new and better efforts to fully identify these vices, to root them out and to plant in their place the seeds of an effective, timely, and transparent judicial system. But implementation of the disciplinary function is as difficult as administration of justice.

In Ecuador's case, until last December, disciplinary authority for the judicial system rested with the Supreme Court, the superior courts, and the district tribunals, through their highest authorities. Chapter XII of the Regulations of the Judicial Career contains the “Disciplinary Regime,” which establishes the different types of disciplinary actions, from verbal admonition to dismissal, subject to the proceedings established in the regulations. There was even a Complaints and Claims Commission in the Supreme Court and the superior courts, constituted by the respective magistrates, whose task it was to learn about and take action on everything related to irregularities committed by magistrates, judges, other officials, and judicial employees whose actions were questioned.

By constitutional mandate and by provisions of the organic law that regulates it, since March 19, 1998, the National Board of the Judiciary has been responsible for prescribing the disciplinary measures of the judicial system, except those relating to the Supreme Court. The organic law stipulates that the National Board of the Judiciary is the administrative and disciplinary organ of the judicial function and that the Human Resources Commission is responsible for imposing disciplinary actions on all officials and employees of the judicial system. Its decisions with regard to disciplinary dismissal and removal actions may be subject to administrative appeal before the plenary of the same National Board of the Judiciary. The current Political Constitution of the Republic of Ecuador, in force since August 10, 1998, establishes, in turn, that the Board is the governing, administrative, and disciplinary organ of the judicial system.

Recently the National Board of the Judiciary issued "Complaints, Rules, and Regulations," specifying that proceedings that were filed before previous commissions should be brought to and resolved by the Human Resources Commission of the Board. These regulations comprise basic standards, disciplinary actions, and execution, appeals, and procedures. The regulations provide for "the judgment of the behaviors of ministers, judges, officials, and employees of the Judicial System ..." They guarantee administrative proceedings, establish administrative responsibility without imitation with respect to the civil or penal actions that might result, determine five types of disciplinary actions (warning, fine, temporary suspension, removal, and dismissal), and point out the cases in which each type of penalty applies. Any individual or legal entity may present complaints and request the removal or dismissal of magistrates, judges, other officials, and judicial employees with the requirement that the accusation or complaint be presented in writing.

I can assure you that my membership in the Presidency of the National Board of the Judiciary of Ecuador, beyond strict compliance with the regulations, will attempt to highlight at all times the value of ethical and moral principles that are inherent in judicial activities and discipline.
Citizen Participation in Judicial Processes

Justice Julio Salvador Nazareno
President of the National Supreme Court of Justice of Argentina

Citizen participation in judicial processes is important, therefore individuals should be able to activate the jurisdiction of our courts in lawsuits against the state or against corporations that produce goods and services. In Argentina, as in other countries, a broader framework of legitimacy has been developing that surpasses the traditional rule of law in which only one type of social interest acquired legal relevance. Although the recognition of rights is an important step forward, it presents a new set of problems that may require a new legal ordering.

One mechanism that is used to channel the links between society and the state when the state exercises the judicial function is the figure of amicus curiae (friend of the court). Although some mechanisms have their origins in Roman law, amicus curiae comes from common law. The Institutes stated that amicus curiae was the person who, in order to help the court, supplied information on legal issues about which the judicial entity manifested doubts. In those times of secular judges and limited propagation of the contributions of juridical science, the denomination of this institution coincided with the function of legal assistance that the friend performed. Since that time there have been structural changes in the society of the state that altered their interrelationships. The function of the amicus curiae likewise suffered modifications but, as usual, the institution changed and the name remained.

Constitutional courts are responsible daily for defining essential aspects of the individual and social life of citizens, such as:

- Limits of expressions.
- Protection of honor and privacy.
- Scope of proprietary rights.
- Freedom of association.
- The death penalty, euthanasia, and abortion.
- The possibility of penalizing the possession of soft drugs.
- Scope of the powers of the state to arrest and interrogate people.
- Discrimination.

The exercise of such power has favorable or unfavorable repercussions on the rights, aspirations, and expectations of the numerous interest groups that exist in a pluralistic and democratic society. Such groups may attempt to persuade the court to adopt a resolution that is most convenient to their interests. That is precisely where the amicus curiae of our time appears, arguing against validity or timeliness. The right to petition the government is essential because it allows citizens to present claims to the authorities and makes the authorities aware of popular opinion on social issues so as to develop better policies. In this regard the presence of numerous organizations intervening as amicus curiae is important.

When in court the amicus curiae must indicate the issue that motivates his or her presence before the court and the norms that are at play and how they have been interpreted over time. The amicus curiae will indicate whether there are precedents, refer to the solutions adopted with regard to comparative law, and provide the criteria that doctrine has presented on the subject. The amicus curiae should be explicit before the court about his or her interests, present the arguments on which his or her position is based, and conclude by recommending...
a solution to the case. In this way the amicus curiae
allows the court to take into account juridically
consistent arguments that could have been over-
looked by the adverse majority in the legislative
chambers or by an executive confused by the results
of a popularity survey. The Inter-American Court
of Human Rights, by applying Article 34, paragraph
1 of its Regulation, has admitted that the consent
of the parties is not necessary with the presentation
of allegations by the amicus curiae.

Mediation—a useful method of intervention—
also makes use of civic participation. Mediation is
a method of resolving disputes in which the resolu-
tions generate favorable results for both sides. Set-
tled disputes reflect well on the judiciary and
decrease the judiciary’s work load, thereby giving
judges more time for contentious and complica-
ted cases. In Argentina, for example, a recon-
ciliation service is required before legal action can
occur in labor matters. As a result, 42 percent of
the total number of proceedings were settled by the
parties, significantly decreasing the work of the
labour courts.

The tremendous success of this system is not lim-
ited to labor relations, where employee needs moti-
vate a prompt solution to a conflict. About 35
percent of federal, civil, and commercial cases in
Argentina were settled through mediation in 1998.
In Buenos Aires more than 65 percent of civil and
commercial cases were settled through mediation.

A judiciary council is another participatory
method for people involved in the judicial process.
In Argentina the Judiciary Council was incorpo-
rated into the constitutional reform of 1994. Since judi-
ciary councils were instituted in Argentina partic-
ipants have included representatives from law schools
and legislators. The election of magistrates seems to
be the fruit of a very transparent process in which,
at least from a legal viewpoint, priority will be given
to the most suitable candidates rather than to those
with political advantage. If a judiciary council com-
plies with a constitutional mandate and does not
repeat the mistakes attributed to the derogated sys-
tem, a council’s intervention should be received
with approval because it allows citizens to control,
through representatives, the section of magistrates.

The final topic for discussion is trial by jury—
the greatest expression of citizen participation in the
judicial process. In a trial by jury, citizens partici-
pate in the judging. This is a controversial topic that
provokes discussions in my country as well as in
many parts of the world. (As an aside, two author-
ities on criminal law in Argentina—Vélez Maricón
and Claire Olmedo—do not support trial by jury
in Latin America because of the risk of a low edu-
cation level of jury members, the absence of such
a tradition in our culture, and the lack of sufficient
judicial control in jury decisions.)

However, we should examine the utility of trial
by jury as a possible method to improve our judi-
ciaries. I propose an analysis of trial by jury in the
United States. Abrahamson, an author on the read-
ing list, states that although those who propose
the abolition of the system are few, many others are
in favor of following the English model of restrict-
ing the types of cases in which there should be a
jury. The author adds that the violence that left 30
dead after a trial by jury acquitted a white police-
men accused of beating the African-American Rod-
ney King in 1991 is proof of the loss of faith in a
jury. Abrahamson provides an illustration of the
skepticism toward trial by jury in the United States.
The first point the author highlights is that justice
must be distant and waterproof to protect it from
the pressure to do what is more popular. For this
reason federal judges are nominated and not elected
through electorate voting, and their positions are
for life.

The jury’s democratic perspective reflects pop-
ular justice and community conscience. Today juries
tend to substitute the empire of the law by the
empire of the people; this is not an entirely bad thing.
Juries have repeatedly shown courage in protecting
dissenters against existing orthodoxy, which judges
designated by the authorities would probably never
have done.

No other government institution can compete
with the jury in placing power directly in the hands
of citizens. Does this system allow juries to enit their
verdicts based only on the evidence of the process
or does the mass media influence public opinion?
Reality has been replaced by a virtual reality, deli-
ered through audiovisual media and created by a
select few media professionals. The risk is that
alleged criminals may be tried in the press instead
of in the courts. In such an environment can a citi-
zen objectively judge the facts investigated in a
judicial process?
Another important issue is the gap between the complexity of modern procedure and the intellectual qualification of juries. But many are unfamiliar with the law, given its complexities and controversies. The solution to a controversial case does not lie in the technical matters raised during a case but in the emotions, prejudice, and sympathies of the jury.

The search for representative jurors gives the impression that justice precariously depends on race, sex, religion, or even the national origin of its members. It is not unusual to find during the juror selection stage that consultants in jury matters become very important. They advise lawyers on the manipulation of the jury based on statistical studies, research, and psychological profiles to predict how the potential jurors would vote based on certain indicators such as race, age, income, sex, social and civil status, personal background, and even the automobile they drive.

I invite you to consider one last important aspect that may strengthen the judicial branch as a depository of the guarantees of the inhabitants. As citizens and as human beings we participate in the results that the judiciary generates. Society is examining critically the role of justice and demanding a profound change in the behavior of the state—transparency in their behavior, independence in their decisions, and executive action in the performance of their functions. Therefore, we should consider whether the solution of implementing a jury system to enforce offenses would not be taken by our society as an easy way out.

Our objectives are to reinforce justice and ensure that changes be led by the rule of law. Therefore, this meeting gives us the opportunity to reflect, exchange ideas, and improve the institutions to allow greater citizen participation in judicial processes. The inherent intelligence of their genuinely democratic instruments can help overcome the fallacies of the administration of justice and the skepticism of the judiciary.
In all institution reform processes the need to reframe both objectives and the preexisting organizational design arises. As Denis Abo warned, reform requires carrying out a set of actions that give a new shape to the ideology, strategies, and, above all, the organic structures that guide, rule, or manage an institution. In the specific case of the justice administration reform, this process of change needs to start from an exhaustive and comprehensive verification to enable an objective and systematic analysis of the qualities, advantages, defects, benefits, and problems originating in the social service of justice.

The Peruvian judicial reform's main trait appears to be a new jurisdictional or administrative functional organization chart very different from the organic model prior to 1995 at attribution and competency levels. That model centered management and jurisdictional control functions exclusively on the Republic's judiciary and, above all, on the court in full session. A sort of general assembly of supreme magistrate had to not only take care of their overloaded offices but also remain linked to administrative decisionmaking of little importance considering their rank and hierarchy. It caused huge procedural delays, serious operational conflicts, and plenty of management disorder. This not only affected the public image but also increased mistrust in the judicial branch and had serious negative effects on the lower bodies of the judiciary and different judicial districts.

The main objective of this paper is to explain the Peruvian judiciary's new organic structure and the most significant achievements reached in the past three years through this innovative organizational design. It aims at developing an efficient and timely justice administration to guarantee the normal development of Peruvian society, characterized by a solid and democratic institutional vocation.

The organization and operation of the Peruvian state are divided among the executive, legislative, and judicial branches, and their responsibilities are clearly established in the 1993 Constitution. The judicial branch is charged with administering justice, which must be accomplished through hierarchical organs complying with the Constitution and laws. The judiciary is an autonomous and independent institution, integrated by jurisdictional organs (Supreme Court of Justice, the High Courts, the specialized courts, counselor peace judges, and peace judges) that administer justice on behalf of the nation and managing and ruling organs.

The Supreme Court is the highest court and its competence embraces the whole of the national territory. Its venue is in the capital and it is formed by the President of the Supreme Court, the Supreme Member, the Chief of the judiciary's control office, and 18 supreme judges holding office. There are three jurisdictional areas—the civil court, the constitutional court, and the social court. The President is in charge of the judiciary's presidency of the Executive Commission and of the Judicial Coordination Council. The High Courts of Justice are based on the departments and cities indicated by the law. Their authority extends over only the geographic area assigned to each judicial district. They operate through penal, labor, family, public law, and contentious administrative process courts. In general, these courts solve second and last instance processes known to them.

There are also High Courts under the Supreme Court specialized in judging drug traffic, terrorism,
and criminal organization offenses, and tax and customs frauds. The counselor justice's courts are jurisdictional organs familiar with minor matters, and the competence of justice's courts is limited to the nature of the issues and to the amount of the litigation. They mainly act as conciliatory agents.

When the reform of the judiciary began on November 20, 1995 through Law Number 26546, governmental and management functions were conferred temporarily to the Executive Commission of the judiciary. The execution, coordination, and supervision of the administrative activities were delegated to the Executive Secretariat, a technical body that also forms part of the members of the Executive Commission of the judiciary. When the Executive Commission of the judiciary assumed its functions, various provisions of the Organic Law were suspended so that the Commission could fully develop its programs and activities and thus achieve the proposed objectives.

The Executive Commission initially included the president of the constitutional law division, the president of the civil division, and the president of the criminal division of the Supreme Court, and an executive secretary. Subsequently, with Law Number 26695 of December 3, 1996 the makeup of the Executive Commission was modified. It is now composed of the president of the Supreme Court, the president of the constitutional and social division, the president of the criminal division, and an executive secretary.

Law Number 26623 of June 18, 1996 created the Judicial Coordination Council, a very important body whose mission is to coordinate general policy, development, and organization guidelines for all official institutions connected with justice administration issues. This is essential in a reform process to achieve an adequate interinstitutional relationship so that the various entities can adapt in a coherent manner to the changes, and the entire system can attain simultaneous and standard development. This Coordination Council is headed by the president of the Supreme Court and includes the president of the Executive Commission of the Public Ministry and the president of the National Judiciary Council.

According to the law the Executive Commission of the judiciary should conclude its reform activities on December 31, 2000. The main issues addressed include:

- Delays in processing files.
- Insufficient and inadequate infrastructure.
- Almost total absence of information systems.
- Low salaries.
- Serious cases of corruption.
- Absence of training programs.

Notable changes have been made that have propitiated and consolidated an effective and dynamic modernization of this power of the state. In this regard, the Executive Commission has promoted various programs, plans, and strategies to make the integral restructuring and reorganization of the judicial system feasible. To that end, it has touched on various topics such as the judiciary office, the jurisdictional career, and a new organic statute for the judiciary.

Since its creation the Executive Commission, by temporarily assuming the government and management functions of the judicial power, has dedicated itself to planning and conducting the various areas and stages that the process of reforming and modernizing justice should cover in a country with geographic and socioeconomic characteristics such as those of Peru. It must attempt to make justice efficient and effective with honest, capable, and well paid judges supported by modern technology, an adequate infrastructure, and a clear vocation to serve the Peruvian people.

To reduce functional misconduct, the Executive Commission hears the disciplinary measures applied to judges and superior and auxiliary members, and, if necessary, it may propose a measure of dismissal to the judiciary council. We should likewise point out that the judges in all instances have been actively participating in the reform of the judicial power. They have been forming various commissions charged with studying the issues and alternatives for improving the judiciary system. These commissions have played a relevant role in deciding the measures to be applied in restructuring and rationalizing the judicial districts, in evaluating the procedural load of the divisions of the Supreme Court, and in analyzing the ideal way to manage noncontentious processes or appeals for dismissal or complaints. Their cooperation in designing and implementing new dispatching models or corporate support modules for jurisdictional entities has also been decisive in its strict selection of the member of the Bar, who
will create the roster of attorneys eligible to be acting judges; in its technical compilation and coding of jurisprudence issued by the specialized divisions of the Supreme Court; and in its coordination of the reform of the Control Office of the judiciary.

As may be inferred, the Peruvian reform, thanks to the flexibility of its new organization chart, allows for an adequate decentralization of its projects and decisions, thus strengthening the integration and commitment of all the judges with its objectives and development.

There have been several significant achievements in the reform and modernization process of the judicial power. In the administrative area:

- Adequate rationalization of existing personnel has occurred.
- The administration system of judiciary information was perfected.
- Improvements were achieved in the notice issuing service, central recording of sentences, issuance of certificates, requisitions, expert appraisals, assessments, embargoes, bail, and guarantees, as well as control over impounded goods.
- The systems for controlling personal income and collections, rate, consignment, fine, and civil redress were reformed.

The jurisdictional area has been provided with adequate physical facilities for carrying out the legal activity of all the country's judges. Furthermore, computer systems have been progressively implemented in the judicial offices so that their functions may be carried out in the quickest and most efficient manner. As has been noted, an important achievement of reform is that it has conveniently separated the functions of the government and management of the institution from the strictly jurisdictional functions of the judiciary. Consequently, judges may now dedicate themselves fully to the task of administering justice, and their decisions will improve in timeliness and quality.

Another priority of reform is judiciary training. Multiple measures have been developed to offer judges numerous professional updating courses at the local and national level. Computer and management courses have also been offered. To evaluate and standardize trends in case law, there have been full jurisdictional meetings in all specialties. Seminars on ethics and morals have been included so that attendees might internalize the values of honesty and service vocation that guide the institution.

As for economic improvements, the amount of the judges' remuneration, by way of a bonus for jurisdictional functions, has been increased and financed by judiciary resources. This bonus is not included when calculating pension payments and is basically associated with productivity. To geographically decentralize the rendering of the administration of justice, new judicial districts have been created in areas with high demographic density.

To detect and severely sanction corruption cases, the Control Office of the judiciary has been strengthened and made more dynamic. Similarly, a struggle against corruption has been implemented through preventive measures and sanctions.

To reduce the heavy legal load of the jurisdictional entities, temporary divisions were created in both superior courts and in the Supreme Court. Three temporary divisions were created in our Supreme Court—a civil division and two criminal divisions. The criminal divisions also hear, as special final instances, tax, customs, and illicit drug trade offenses. Furthermore, a national in-jail trial program for prisoners has been implemented, which has rapidly relieved the congestion of proceedings with jailed convicts. Similarly, to ensure a timely reply to denouncements of people under arrest made by the public ministry, as well as to be able to carry out other legal proceedings that require the immediate intervention of the jurisdictional authority, a permanent criminal court was created to function 24 hours a day all year.

To achieve greater effectiveness in complying with restrictive measures established by the criminal jurisdictional entities against absent or contumacious defendants, processes in reserve and arrest courts have been established. These entities allow defendants in these conditions to present themselves before the appropriate judicial authority, thus avoiding impunity and the prolonged accumulation of this type of case.

Peru has also established itinerant courts that allow judges and courts to travel periodically to locations far from the court's headquarters. Pending cases may be solved in distant areas, thereby avoiding the sending of files to the city courts and the ensuing difficulties and elevated costs for those liable for trial.
Another novel aspect about the organizational aspect of the reform is the progressive implementation of a new management and processing style of handling judicial matters in the divisions of the superior courts. It is based on an organizational concept of corporate modules in both the jurisdictional and administrative service. This measure has also been achieving high production of judicial decisions.

Finally, to make justice accessible to marginal urban areas and less developed areas basic justice modules have been designed and are being built. They are mini judicial complexes with courts, government attorney's offices, experts in medical jurisprudence, free legal consulting offices, and reconciliation centers. Thus it is possible to combine the various agents involved in administering justice and bring legal services closer to low-income groups.

The Executive Commission of the Peruvian judiciary is dedicated to studying and implementing the organizational designs that are considered necessary and suitable to consolidate in our country a judiciary power with upright, independent, and honest judges, with a vocation to serve and uphold justice. It will be a judiciary that will inspire confidence in the people and strengthen legal security in society.
Puerto Rico has had a jury-based institution for almost a century, adopted from North American common law, but only for very serious criminal cases. It is not used in civil cases and has functioned well. Puerto Rico’s legal system permits the accused to waive the right to a trial by jury, and when the case is either very complex or the accused has a certain probability of being condemned, the accused may waive his or her right and choose the court of law. Because the system uses the oral proceeding it was relatively easy to adapt this modality.

It is assumed that the foundation of the trial by jury is that the person be judged by peers—by the community. In the Puerto Rican federal court system potential members of a jury must speak English and Spanish in order to be sworn in. Contrary to popular belief, Puerto Rico’s population is not completely bilingual; the primary language is Spanish. About 75 percent of the population is not bilingual. What representation does the jury really have?

We spoke with attorneys at the Federal Court and they informed us that they have a method for addressing the lack of bilingual jurors who can follow proceedings in English. In complex cases they instruct the witnesses to say that they do not speak English so that an interpreter will be called and then the jury hears the Spanish language version and can understand what is happening. I believe that each of your countries that intends to incorporate this concept must be very careful. It must be adopted in such a way that it will be effective and useful in your system, bearing in mind the particular situations inherent to your individual systems.

Our real goal is to achieve the participation of all citizens in the entire judicial process. This leads us to search for methods that work not only so that each accused is tried by a jury of his or her peers but also so that the people will feel that they are part of the transparent administration of justice. It is important that citizens not perceive the meting out of justice as something extraneous that has been assigned to certain people or officials, but rather as a process in which they can also participate.

This can be done in a number of different ways. The Justice from Puerto Rico made some very keen comments that should be examined in the context of each country according to its traditions. Once this is done you can look for a formula for citizen participation. For example, we have spoken here of courts with juries of lay people and judges where the courts are established with the participation of citizens. There can even be mixed courts with a combination of professional judges and lay judges, which would incorporate citizen participation in the administration of justice. Of course, no formula is magic nor is it devoid of problems and difficulties. But I do think that we have to find a way to eliminate such difficulties and open a space in legal reform because allowing citizen participation in the administration of justice is essential.
Supreme Court of Peru. Judicial reform is very similar in all our countries. The models and type of legislation we have used until now have resulted in justice that is ineffective, delayed, or simply inefficient.

The reform of the judicial systems should be made in three areas, but based on reality, not simply formalities. The first area is the selection and training of judges. In Costa Rica one of the weaknesses is that we do not have judges or professionals who have been trained to be judges; the universities produce generalist lawyers. This is the market from which we take our judges and put them in the courts to administer justice, with so many deficiencies that once I recall a judge who did not even know how to formulate a decision.

We have to change this selection system, build systems based on suitability, and objectives in which no political or any other kind of interest participates. We must establish judicial schools, not to give isolated courses or refresher courses in seminars, but schools committed to the training of judges.

The second area of reform should be of obsolete legislation. We have very slow legislation. In matters of procedure, for example, we are still tied to systems that do not include basic principles such as mediation. We do not have methods that provide good solutions to problems, such as oral procedures. We have to move very quickly toward changes in our procedural systems, to streamline and simplify processes so that ordinary people have access to them.

Finally, we need to review our management and administration models. The traditional concept of the office no longer suits modern needs. This is a very delicate area because it is not simply a matter of changing these traditional models of judges or courts as separate atoms but also of introducing information technology and of separating pure administration from the administration of justice.

The changes proposed by the new type of administrators must be taken with a grain of salt. In Costa Rica we made a mistake in designing changes without the participation of our judges or civil servants. We tried to introduce something that was innovative and good but it was not explained to the people who had to operate it. They had not taken part in the construction of the system and therefore did not feel any commitment to it. There was a great reaction, which at one point became a boycott. I wanted to share this experience with you so that you bear it in mind when you make these changes.

**Justice Cecilia Sosa Gómez**

I will make three brief points. First, I want to refer the presentation of Justice Nazareno on the subject of mediation. Perhaps the objective of seeking alternative systems is not necessarily to decongest the courts. In our legal tradition, anyone who has a dispute thinks first about taking it to the courts. If we establish mechanisms of mediation—as the statistics presented by Justice Nazareno indicate—we would have an alternative system and a much broader sense of justice.

The second point relates to the new Organic Code of Criminal Procedure of Venezuela, which will come into effect on July 1. Three trial mechanisms are included in the Code, classified by type of offense: offenses subject to sentences up to 4 years are tried by single judges, 4 to 16 years by one judge and two lay people, and more than 16 years by jury, although for a few years trial by jury is for offenses more than 20 years. Later we will discuss our experiences in this combination of alternatives.

Lastly I want to mention the area of information technology, of which the vice president of the Supreme Court to Brazil spoke. A survey of all supreme courts reveals that not all judicial systems are computerized. Information technology is essential because it provides a connection among us through a network that satisfies our information needs, at least at the continental or Ibero-American level. However, to establish a computerized information system requires a large budget, which is not always understood by our congresses or parliaments, which approve the budget.

**Dr. José Bruno Otero**

I would like to speak very briefly about two issues—information technology and judicial organization. Information technology and information superhighways must be established and function in two ways. First, they must provide judicial information and information on judicial work, which is the
work of the judicial office. This is the office that the court clerk, officials, and assistants consult. It handles the registration of cases and notices on procedural acts to the parties and other courts and external communication.

In Spain we have recently created some common services in an effort to rationalize the work of the courts and give judges more time to spend on their jurisdictional functions, leaving the more mechanical works such as notifying the parties to the common service. This has had very good results and has strengthened the figure of the judicial clerk.

As for computerization, I want to emphasize the need for integration in relation to the documentation that all judges should have available, such as case law, legislation, and comparative law. Ideally all our countries would have computerized intercommunication, although it would be very expensive. The solution that I can offer you would be a collaboration with Spain's documentation Center in San Sebastian, known as CENDOC, which is computerizing all basic Spanish legislation. I do not mean the legislation of the autonomous communities but the legislation of the Spanish state and all the case law of courts, including the Supreme Court, the Constitutional Court, registers and notaries, and the European Tribunal of Human Rights. The system is not yet fully operational but we do have CD-ROMs of all legislation.

As for judicial organization, I think that each country's legislature has a duty to determine the best structure according to each country's circumstances in this very delicate area of judicial organization or the organization of the judiciary.

We must approach the selection of a system with caution and care, and I am not going to advocate any particular one. In Spain we have a General Council of the judiciary, a Supreme Tribunal, which is the highest jurisdiction in ordinary legality, and a Constitutional Tribunal that judges generically political matters. Countries should ensure that their judicial organization is horizontal, rather than vertical, so that the status of each of its jurisdictional or judicial members is identical. All judges must be equally protected from an attack on their independence. If the organization is not horizontal these attacks can come from the organization itself. Therefore, I think that the type of system adopted should be carefully considered.

Justice Raúl José Alonso de Marco

I wish to state my disagreement with what Dr. Otero has just said on the organization of justice.

We believe that each country should find its own solution according to its traditions and the way in which its judiciary has operated. Uruguay's judiciary is formed by all the judges so that all judges have equal institutional dignity, independence, and capacity to decide matters based on their knowledge and understanding. However, for the purposes of discipline they are subordinate to the judiciary and the Supreme Court, which can judge them for acts outside their judicial functions—acts that have nothing to do with the exercise of the judicial function but relate to their conduct outside the system or within their duties but not strictly related to the judicial part. This system has worked well for us. No judge in our country has been persecuted by the Supreme Court; on the contrary, we want all judges to have proper guarantees, and we have always had their support.

I agree with the views of Costa Rica's representative. Although our countries are far apart, we are synchronized. I want to affirm two things he said: only judges can teach judges and a judicial school must have the direct participation of judges in its control and management. The director of a judicial school should be an active judge of the appeals court.

Another point the Costa Rica representative made seems even more essential. Reform projects produced by international consultants should have the participation of the judges and officials of the countries involved, otherwise they are not in tune with the reality of the service. They are like a shell that is pretty outside but has no life inside. It seems to me that with no previous agreement, the group of countries that have made or are making institutional reforms have been precursors in this area. We cannot make reforms without the consultation and participation of all members of the judiciary, especially the judges themselves, but also officials and lawyers linked to the judiciary.
Fight Against Corruption: Raising Awareness and Promoting Ethics
I will address the importance of management capability because the risk of corruption is greater where there is bad management. For this reason budgetary management must be transparent.

We are at the threshold of a new century and a new millennium. We are undoubtedly witnessing the formation of a new world order with characteristics of universal unification and globalization. Although this new order can foster mechanisms of integration and unification it can also unleash powerful mechanisms of exclusion, disintegration, and destruction. We must develop a new social paradigm for the judiciary based on human rights, democracy, and development.

We believe that the judicial systems of each of our countries are responsible for generating a profound transformation that will guarantee individual rights. But such a guarantee will only be possible if the judicial machine manages to purify itself of petty corruption and present itself as transparent and coherent.

The reforms of our judicial systems must include a code of ethics to regulate the actions of the judicial sector. Before creating a code of ethics we must examine the concept of ethics. Ethics reflect the universal moral principles ruling the behavior of all human beings. These principles are necessary for the enjoyment of an orderly and peaceful life and have been recognized since people began to live in a society. The judge or civil servant who strays from these principles must be sanctioned and the seriousness of his or her misdeed may lead to a loss of position. As the arbiter designated by society to judge conduct, he or she must be seen as a human being free of faults. This not only means being good but also maintaining this good behavior in the public eye. Thus judges must establish rules of conduct that maintain the integrity and independence of their jobs and stimulate respect and trust in the judicature. The main objective of any code of ethics is to maintain an optimum level of excellence and correctness in the behavior of its officers, employees, and justices of the judiciary.

I propose the adoption of some criteria for a common structure that could be the foundation for our code of ethics for the judicial civil servant:

- **Honesty**—must always abide by correctness, honesty, and integrity of thought and action and avoid the abuse of power.
- **Independence and impartiality**—must be as independent and impartial as possible, following the law and his or her own conscience.
- **Discretion**—must be discreet about work issues until they reach the decision stage. Special care must be taken in the protection and use of information about the lives of people, which must only be disclosed for compliance with the needs of justice. Any other kind of disclosure of information is inappropriate.
- **Private life**—must live a moral private life.
- **Incompatible positions**—should not accept positions or missions that are incompatible with his or her judicial responsibilities. Similarly, he or she should not assume obligations or commitments or perform functions that could obstruct the adequate performance of legal tasks. He or she should avoid all activity that reduces the dignity of the position or that could give rise to undesirable notoriety. Involvement in private
work or entities should be limited to activities that do not take time away from judicial functions or run the risk of damaging the image of impartiality and sobriety that give the judiciary its high standing.

- **Transparency**—must document all actions of his or her exercise as well as publicize them, thus guaranteeing their transparency.
- **Efficiency**—must provide good preparation and efficiency. He or she has the obligation to research and study the law and any other discipline that could improve his or her knowledge. He or she must have clear juridical capability in the motives behind the sentencing.
- **Wisdom**—should act without hast, and with a serene sense of judgment. This element is essential to the exercise of the judicial function.
- **Political sense**—must not be prejudiced and assume a hostile attitude toward the other powers but rather keep them within the boundaries of the law and sanction their excesses.
- **Democratic awareness**—must recognize that he or she is society's servant and as such must provide the public with legally requested information.
- **Institutional awareness**—must have an open attitude of communication with his or her peers and avoid isolation and solitude. Institutional awareness requires collective responsibility and work with no room for individual stardom.
- **Social insertion**—must be able to understand social institutions and their perspectives.
- **Awareness of the law**—must correctly apply the constitution, current laws, and international treaties.

- **Overcoming jurist perspectives**—must maintain a broad perspective that includes an understanding of economics, society, morals, and culture.
- **Subjection to the established regulations**—must comply with established work duties and regulations and follow legitimate orders from superiors to avoid disciplinary sanctions.
- **Judicial responsibility**—must answer for all his or her actions. Responsibility is one of the fundamental elements of professional ethics.
- **Declaration of assets**—must make a sworn statement of his or her assets and liabilities.
- **Personal benefit**—must neither receive any improper personal benefit nor impose special conditions leading to the performance of an action inherent to its functions.
- **Gifts**—should not receive gifts or donations in the form of objects or services related to the exercise of his or her functions.
- **Protection of public property**—must not use public facilities and services for personal benefit, friends, or people not belonging to a public function. He or she must protect and preserve all property belonging to the government and only use it when authorized and only use government information while performing official duties.
- **Privileges**—must avoid privileges and discriminations due to political affiliation, religion, race, sex, kinship, and other criteria that conflict with human rights or personal merit.
- **Suitability**—must perform duties with interest, equanimity, dedication, efficiency, honesty, impartiality, and diligence, observing good behavior and avoiding disciplinary infringements.
Discussion on “Ethics of the Ibero-American Judicial Officer”

Justice Sergio Salvador Aguirre Anguiano

We must approach judicial ethics with clear commitment to reality and recognition of dominant practices, but without neglecting the theoretical aspects that serve as a basis for ethical codes and propitiate their practical meaning and, above all, their effectiveness.

A presentation of the problems must be committed to reality, beginning with an awareness of their importance to people and societies. Given that constitutions, ordinary laws, and positive laws generally impose moral duties on judges, an ethics code might not be necessary and could become a source of contradictions. However, some ethical issues not found in the norms could be subject to judicial ethics codes. A code of ethics should not be viewed as excluding solutions or main solutions. Codes should not be promoted without first having reasonable certainty that they will be effective. Consequently, it is necessary to have a clear definition of objectives and instruments and to value the role of a code of ethics within an integral strategy. In addition, incentives or sanctions that will confer actual and long-term effectiveness to an ethical code are important. The main problem with the codes of professional ethics in Latin America is their inapplicability.

I would like to point out a frequent problem: the pragmatic indetermination of ethical norms. For example, “Do good and avoid evil.” This norm is ineffective because its broadness could give rise to the postulation of moral criteria that could be contradictory in concrete circumstances. Consequently, almost any decision could be based on one of the principles of a moral code.

Most ethical virtues that should guide the behavior of judges, as mentioned in the proposed Code of Ethics for the Ibero-American Judicial Official, and others are derived from Mexican law and are norms of positive law, which, when not complied with, entail sanctions. Are we going to repeat in the ethical codes what our various substantive laws already govern and sanction? Will this be the source and origin of greater juridical certainty in achieving perfection in the administration of justice? I doubt it because some situations are contrary to law.

Dr. José Bruno Otero

I have my doubts about the efficacy of codes of ethics and believe more in disciplinary law because it responds more to the concept of juridical security. However, I would like to point out some of the concepts included therein as something that goes beyond ethics. For example, accepting gifts is simply a bribery offense, which either qualifies as such, is left out of the code of ethics, or is defined differently. Incompatibilities also form part of the sanctioning or disciplinary law. It is not permitted to practice several professions or to perform activities outside the practice of judicial authority or compliance with judicial duty.

As for private life, the right to personal privacy is a sacred right to which everyone is entitled, judges and non-judges alike. Introducing private life conduct in a code of ethics can lead to much confusion. Discrimination with regard to gender or merits is included in almost all our constitu-
tions and consequently need not be part of a code of ethics. We must prepare a disciplinary code with clear definitions and sanctions, a broad spectrum of sanctions including expulsion from the service. However, a code of ethics could be effective if the elements have a practical basis and include sanctions.

Magistrate José Andrés Troyano Peña

Panama regulates both aspects of the same code. The judicial code regulates administrative misdemeanors and judicial ethics misdemeanors. I agree with the Chief Justice of the Dominican Republic that judicial ethics require transparency and honesty in the administration of justice, but I would like to issue a word of warning. Accurate definitions of judicial ethics infringements and sanctions are important to our judicial systems. A proposed Ibero-American code must cover infringements of judicial ethics, which will provide the basis for principles. Each country will decide how it is going to apply the code and regulate infringements of judicial ethics, but based on principles that can be governed as a single Ibero-American code of infringements of judicial ethics. Based on the experiences of Panama, some accusations of infringements of judicial ethics are abused by litigants. Therefore, we must think of ways to regulate the abuse of the system.

Panama regulates both aspects of the same code—the judicial code regulates administrative misdemeanors and judicial ethics misdemeanors. In Panama's case, often an official is accused of an administrative infringement and is sanctioned for judicial ethics infringements, making it difficult to distinguish between the two types. We are considering limiting sanctions to one type or the other, but this could cause difficulty in applying norms and sanctions to our judicial officials.

Justice Cecilia Sosa Gómez

The proposed code of ethics is obviously a working document; it is not binding for any of us. However, the technical follow-up unit tried to establish the commitment that we assumed in the Caracas Statement last year, which was to develop a code of ethics for judicial officials. If we refer to the book in which all these discussions were compiled, the presidents wanted an instrument that would regulate the principles of a judge's behavior.

A disciplinary code should be avoided because it could lead to varying definitions in each of our countries. Our goal is to develop a standard, unified code while respecting the internal regime of our respective countries. Perhaps the name is generating unwanted constraints. We need a body of ethics principles that each judge will abide by, without the need for them to be imposed, not even from the regulatory point of view. It is an attempt to incorporate the life experiences of each of us throughout our careers as judges into a code of ethics.

Before continuing, I would like to discuss a proposal on corruption made by a Justice of the Supreme Court of Venezuela, Justice Jorge Rossel, Magistrate of the Criminal Division, and I propose including a provision recognizing illicit enrichment as a cause for removal from office in the laws regulating judicial career or disciplinary instruments for judicial control. The wording for this already exists in law:

The practicing judge who, while in office, or for the two years after leaving such office, were to be found to be in possession of assets, without justification, whether obtained on his own or through a third party, which obviously exceed the judge's economic possibilities, shall be dismissed from office . . . not only can the conduct of judges who have illicitly benefited from their office be sanctioned, but the government does not have to provide proof or determine the origin of such benefit.

Justice Orlando Aguirre Gómez

I have often heard in my country that codes of ethics are like a fifth wheel on a car and usually are implicit in all regulations. However, we need a code of ethics because it would lead to a systematization of the regulations and would remind us that ethics are a part of our lives. A code of ethics should be more general instead of exclusively for judges in Latin America, to include those of us who have the obligation to guide the destiny of the judiciary.
A discussion of ethics should not only be formal but practical. The selection system should begin with the idea that a selection must be made between those who do not serve and those who do. We, who are the leaders of the judicial branch, should be given the option and the obligation of selecting the ideal people for positions in the judiciary. A fair remuneration for judges and employees in general, without being excessive, is an important incentive. A strong disciplinary system and a commitment by those who administer the system is imperative.

Justice Cecilia Sosa Gómez

Notwithstanding the commitment derived from the Caracas Declaration, this discussion group is also free to make changes or modifications to the approaches used.

Dr. José Bruno Otero

Declarations should be positively and not negatively stated, covering protection systems as well as civil servants.

Justice Alba Luz Ramos Vanegas

Our goal should be to issue a global declaration as a call to the conscience of civil servants, a parameter to which Ibero-American judges and magistrates can adjust without entering into a disciplinary regime. Canon 6.1 states, “Judicial civil servants will tolerate public criticism and will not reply.” This law should be stated differently because it does not allow the judiciary to respond to false or biased information that is leaked to the media. The implication is that silence denotes consent.

Canon 5 states, “Judicial civil servants shall not be members of organizations or electorate groups, guilds or groups of interest, will not attend or collaborate in their events or activities, nor shall they express political, guild, or interest preferences for any sector.” The concept of guild must be clarified; judges and magistrates normally belong to bars and groups.

Justice Cecilia Sosa Gómez

I think we agreed on not discussing detail; however we could reformulate the most general canons
according to those ethical principles that inspire any judicial civil servant.

Justice Sergio Salvador Aguirre Anguiano

However, when examining a canon, we must analyze its real effectiveness in detail. General statements about a canon contribute very little to change.

Justice Cecilia Sosa Gómez

Although these discussion groups are not compelled to reach conclusions, we must have a uniform will. A specific proposal requesting that the supreme court fulfill the disciplinary procedures of our countries would be appropriate.

Justice Sergio Salvador Aguirre Anguiano

Can the code of ethics be superimposed, or coexist in the same ruling, or have a residual value? If a code has a residual value, there are several deontology principles worthy of codification that could then be linked to some type of sanction, even if it is not the one emerging from positive law. It would be worthwhile to work on a Latin American code of ethics containing this residual value, a sort of supplement.

Justice Cecilia Sosa Gómez

I do not think that this discussion group should resolve about making a residual code of ethics because it would be rejected for conflicting with regulations in our countries. The residual value will not have any value in our internal regulations. Instead, we should describe the ethical principles that must apply to judicial civil servants in the conclusions. This could be widened to cover not only judges but also judicial civil servants with a residual value in terms of the disciplinary procedures of each of our countries.

Justice Armando Figueira Torres Paulo

If we do not develop a code of ethics, we must make an institutional declaration stating the need to deal with this matter in all our countries. In Portugal, for example, an administrative procedure code was issued by the government a year and a half ago. Violations of this code are under the disciplinary point of view of the justice civil servants’ high council. (Civil servants have a high council similar to the judiciary high council.) All violations are judged by the council. Civil servants’ violations are judged by a council elected by and formed by civil servants. In case of release appeals, the decision will be made by the corresponding administrative courts. Therefore, we have a totally different organization.

Unidentified

Who is harmed by a general declaration of ethical principles? I propose that the main general principles be gathered to elaborate a declaration of principles and that we forget the name code of ethics. Let us simply call it a “declaration of principles” based on those principles generally adopted by each country.
Mock Trial

The Caracas Declaration of March 1998 proposed, among other actions, that the courts develop simulated trials to facilitate the establishment of sound judicial policies in the fight against corruption. For this session a court of seven judges conducted a mock trial to model ways to adapt and apply international instruments on corruption to court proceedings. This mock trial demonstrates the kind of collaboration that should occur among the different judicial actors, not only in Venezuela but throughout Latin America.

General instructions for the mock trial are as follows:

- The basic supporting instrument for the court and for each party will be the Inter-American Anti-Corruption Convention approved in Caracas in March 1996. The convention has been ratified by 12 countries of the region.
- The judges, the prosecution, and the defense have total freedom to use any national and international instrument for the prevention of crimes related to corruption.
- In the mock trial reference will be made to the oral proceedings that are characteristic of the accusatory criminal systems, a practice that has become more common following the numerous reforms that are being implemented in some Latin American countries.
- The mock trial will consist of an opening session in which the representatives of the Public Ministry and of the defense state their arguments. Examination of evidence will come next (not to exceed 30 minutes) followed by the closing arguments of the prosecution and defense.

Once the arguments have concluded, members of the court will retire to chambers to deliberate. At the conclusion of the deliberations, the Magistrate President will announce the verdict, and each judge will announce his or her decision, supported by a brief oral review of the arguments (not to exceed five minutes per judge).
- There will be simultaneous interpretation in English, Portuguese, and Spanish for the participants.

Case

Mr. Felipe Guzmán, a professional engineer and public official of Benerí, is the Coordinator of the Bidding Commission at the Ministry of Agricultural Development. He sets the bases of bidding processes for contracts of goods or services and evaluates the proposals presented by the bidders. He also has direct supervision of the technical, economic, financial, and legal offices assigned to the Commission that examine the details of every offer. Felipe Guzmán has been working in the Ministry of Agricultural Development for about 11 years as a specialist in agricultural development.

On one occasion a representative of a company from the Republic of Latonia, Space International, Ltd., arrived at Benerí and made a courtesy visit to the Minister of Agricultural Development to introduce the company and to discuss its qualifications. The Ministry of Agricultural Development invited Felipe Guzmán to attend the meeting. With pamphlets and certified reports, the visitor demonstrated the technological and professional advances of the company in the agricultural projects of different nations. At this meeting Felipe Guzmán was
invited to the Republic of Latonia to attend the annual congress of international consortia with expertise in this type of projects. On his return, Felipe Guzmán brought a dossier of the attractions of the event and the achievements and progress achieved by the company.

One year later, the Ministry of Agricultural Development of the Republic of Beneri called for international competitive bidding for the development of an environmental evaluation system along the border. The objective was to determine the agricultural variables—quality of soils, natural and artificial drainages, and useful areas—to plan a Geographical Information System (G.I.S.), estimated at US$250 million. Letters of intent of companies from several parts of the world began to arrive, and many companies sent officials to Beneri to obtain more information. The evaluation matrix, however, whose preparation was under the responsibility of the Minister of Agricultural Development of Beneri, was not ready before the reception of the offers. All companies were evaluated and Space International, Ltd. was declared the successful bidder for presenting the best offer.

Once the execution of the contract began—which was being duly complied with by the winning company—Felipe Guzmán joined the company with an annual remuneration of US$200 million, which was about 18 times the salary he received while employed in the Ministry of Agricultural Development.

In light of this situation, the representatives of the other companies participating in the bidding protested before the Minister of Agricultural Development and, in a press conference, denounced serious irregularities and illegal practices in the handling of the bidding. The Minister of Agricultural Development requested the opening of an investigation. The representative of the Public Ministry initiated the investigation and performed all the evidentiary proceedings to determine the offense and the corresponding charges, and once the investigation was completed, an indictment was issued.

The following factors emerged from the investigation:

- Felipe Guzmán held two private meetings at the headquarters of Space International, Ltd. in Beneri during the period designated for the reception of offers and while the evaluation matrix was being developed.
- The winning company had access to and made use of privileged information.
- Felipe Guzmán’s Sworn Declaration of Personal Assets did not show any assets that exceeded his economic circumstances.
- The review of the evaluation matrix did not reveal any manipulation and the score assigned to each category was the one that is usually assigned in accordance with the weight that each aspect has within the offer being evaluated.
- The evaluation of the bidding process demonstrated that the conditions of the winning company partially exceeded the ones offered by the other bidders.
- The investigation of the winning company found that the company had access to unauthorized material and that the terms of reference from other bidding processes were in the same files as the bidding process in question.
- An evaluation of Felipe Guzmán’s credentials determined that he had the required professional skills for a position of the responsibility and remuneration assigned to him by Space International, Ltd.
- Upon presenting his Sworn Declaration of Assets, the Minister of Agriculture and Breeding indicated that he did not own any real estate abroad.
- The Ethics Commission of the Ministry of Agriculture of the Republic of Latonia has declared that Space International, Ltd. has participated in several bidding processes and is under investigation.
- The investigation found no foreign banking accounts in the name of Felipe Guzmán. However, his 21-year-old daughter, Ana Guzmán, had begun graduate studies in Latonia upon the culmination of the bidding process.
- The winning company, Space International, Ltd., paid for the purchase of a house abroad that belonged to Felipe Guzmán’s wife.

Decisions

Justice Julio Salvador Nazareno

Your Honor, I am in favor of the party charged being declared guilty based on the Inter-American Con-
vention against Corruption. My decision is specifically based on Article 6.1-A, which establishes that the direct or indirect request for or acceptance by a public official or civil servant of any object of monetary value or other benefits such as gifts, favors, promises, or advantages for oneself or for another person or entity in exchange for the commission or omission of any act in the exercise of one's functions. After carefully listening to the statements and arguments of the defense attorney, I believe that the wife of the accused was given a gift of no less than one million dollars; a gift that has neither been justified by the accused nor by the wife, so that in my opinion the verdict is guilty.

Justice Carlos Mario Velloso

My verdict is also guilty. The legal provision that was infringed upon was Article 6 letter C of the Inter-American Convention against Corruption, which addresses any act or omission by a public official or a civil servant in the exercise of assigned functions in order to illicitly obtain benefits for oneself or for a third party. I considered the evidence, for example, visits by the accused, Guzmán, to the company that had won the bid tender, and substantiated proof that he had received proposals in trust. The accused stated in his defense that he had been sent by the minister of state, deceased at this time. The house was purchased for one million dollars by the wife of Mr. Guzmn before the marriage was dissolved, with payment effected by the company that won the bid tender. The accused defends himself by saying that he was not aware of the matter, had separated from his wife, and had learned of the deal after the fact. The defendant's name rarely appears, but we know that the real name of the corrupt party rarely appears in the case of corruption. Another piece of evidence is that Mr. Guzmán earned a salary of $200,000 a year from the company that won the bid. Defense is based on the presumption of innocence. Justice is presented as a woman holding a scale with two plates; on one plate are all the inalienable individual rights, on the other plate are the no less inalienable rights of society so that the presumption of innocence cannot serve as a screen for impunity when the rights of society are at stake. These are the arguments on which I base my opinion of guilty.

Justice Fernando Arboleda Ripoll

Just as in the case of my two colleagues, I reached the decision that Mr. Guzmán is guilty. It is clear to me that the awarding of the project to Space International, a public interest project, was motivated not by what is good for society but rather by the personal interest of the accused, Mr. Guzmán. I would classify this corruption case based on the Inter-American Convention against Corruption under Article 6 letter C, as did my colleague from Brazil. I would like to stress two important points. Based on proof, trial proceedings, and the scope of the decision, the problem of corruption is one of personal conduct and not one of far-reaching social proportions. In this type of situation the decision must declare the bid and the awarding of the contract invalid and unenforceable and any other type of business related with the corrupt activity invalid. If not, the principles would be invalidated, as well as the reestablishment of law, but the principle that society has an integrity that constitutes a legally protected interest should also be under the guardianship of the court. From that point of view the decision should have included those other aspects. In conclusion, a third aspect, publication and dissemination of the decision of the court, is an example of the oases of integrity that should be present in the fight against drug trafficking and in favor of transparency.

Justice Jorge Eduardo Tenorio

I also agree with the verdict of guilty based on the proof furnished in the proceeding and on the provisions of Article 6 of the Inter-American Convention against Corruption, specifically letters A and C and on Article 9 of the same convention dealing with unlawful enrichment. We must acknowledge that the evidence has certain weaknesses and the work of the government attorney's office was not completely efficient in this case. However, despite this fact and in the interest of Veneri and social benefit, I believe that the evidence leads us to conclude that Mr. Guzmán did take part in corrupt activities. Not only should Mr. Guzmán be tried but also the company or the president of the company Space International, Ltd., which is under investigation. The company's legal representative who furnished payment for the property in the Bahamas that
was given to Mr. Guzmán’s wife should have been criminally tried. Therefore, despite weak evidence from the investigation by the government attorney’s office, which was very deficient and jeopardized the guilty verdict, I believe there is sufficient cause to declare the accused guilty of an act of corruption.

Justice Antonio Martí García

I am the proverbial “bad guy” or “heavy” in this picture. In my opinion, Mr. Felipe Guzmán is innocent of the corruption of which he is accused. While we were there inside, I maintained my position, but now, after hearing the other arguments, I have more reason to think so; each reason may be found in an article. The first is in Article 6.1-A, the second is in 6.1.B, and the last in Article 9. Corruption is a repugnant offense that invests society as the government attorney’s office has stated, but the fact that it is included in penal codes is no less a crime. All penal codes are governed by the principle of presumption of innocence. Presumption of innocence means that justice suffers more if an innocent person is condemned that if a guilty person is absolved and this is the assumption under which we are working. But I would first like to apologize because I am a Supreme Court Justice, have been in administrative law for 28 years, and have been away from the criminal jurisdiction for 14 years. I do have experience in that area but I will state my position based on the law itself. Corruption, according to the code of procedure, is not configured by the mere fact of granting a favor to someone or obtaining a benefit but rather has two prerequisites: that a company benefit and that the company officer make that benefit possible by acting on behalf of the company and, in turn, also benefiting. Article 6 says that the public servant must directly or indirectly request or accept, by exercising public functions, any object of monetary value in exchange for the commission or omission of any type of action in exercising his or her public functions.

The only thing that is attributed to the accused is that on the same day he received the documents of all companies that had participated in the bid he visited the company in question, Space International. The visit did not alter the terms of the bid because the facts acknowledge that after checking the evaluation of the bids, Space International was the one that had tendered the best bid. In other words, if the process had continued its normal course and if the members of the committee had checked the evaluations, they would have awarded the contract to the same company. Therefore there was no alteration of the bids nor was the visit made possible so that the accused would alter the terms of the bid. The bid was awarded to Space International and later was proven to have tendered the best bid. As a result, Space International did not benefit in any way from Mr. Guzmán’s actions on the basis of what was proven. Consequently, I am lacking one of the two presumptions of a criminal offense. If there is no benefit for the company, we cannot claim corruption.

Second, if Mr. Guzmán obtained a benefit as a result of his actions let the members of this court try him for unlawful enrichment. But it was not proven that Mr. Guzmán profited unlawfully because after working as a civil servant joined a company that pays him 18 times more than what he earned as a civil servant. This is neither criminal nor unlawful enrichment. It is lawful enrichment as a result of an action taken by Mr. Guzmán.

Most of the members of the court believe that the house was bought by Mr. Guzmán. But there is no real proof that he bought that house. First there is neither a connection between Mr. Victorino Martín—the person who paid for the house and received the check—and Mr. Guzmán nor between Mr. Guzmán and his wife. I would have to guess that the money had been collected by Mr. Victorino Martín and later given by Mr. Guzmán’s wife or by Mr. Guzmán, but there is no proof. Therefore, two assumptions are lacking for the presumption of the crime of corruption: the benefit of the company as a result of Mr. Guzmán’s actions and the unlawful enrichment of Mr. Guzmán. Irregularities in the negotiation were observed and Mr. Guzmán acted in a way a civil servant should not act. If he was taking part in a bidding process it certainly was not moral or ethical to visit a bidding company. However, we cannot assume that this single visit originated a benefit to that company and an enrichment to him.

I would also like to point out to the audience that this situation frequently occurs in courts throughout the world. Facts can force us to pass guilty judgments and then, while formally analyzing the documents, the evidence does not warrant a guilty verdict.
with the slightest doubt, both in Venezuelan and in Spanish legislation, which are the ones I know, the court has to opt for the application of presumed innocence. This case has not been the cause for presumed innocence but the lack of proof of both requirements necessary for the existence of corruption offense. As repulsive as it may seem the case must be judged by the same standards.

**Justice Oscar Najarro Ponce**

I also voted to declare the accused guilty. The proof is not direct but rather indirect. There is evidence of the participation of the accused. In his confession, Mr. Guzmán admits to acts that harm him, such as having visited the company only a few days after the bid was submitted and not having a good explanation for doing so. We have evidence from the arrival and departure book, which he did not contradict. There is also the purchase-sale document, and although he does not appear on the document there is evidence that he benefited from the deal because his wife says that he brought the document home for her to sign. The prosecutor found it on the premises. His wife says she did not pay. But someone paid and the house is in the name of the wife who is indirectly benefiting the accused. The Inter-American Convention against Corruption, under Article 6-C, states, “This convention is applicable in the following corruption acts: the realization by a civil servant or a person exercising public functions of any act or omission in the performance of his/her functions with the purpose of illicitly obtaining benefits for himself/herself or for a third party.” Logically linked to the accused but the principal accused cannot be in this case because it was a third party—the wife—the one who benefited by acquiring the house for quite a high price.

There are also the witnesses to the facts. Namely, the accused participated in the bidding committee, something the accused admitted in the minutes of the bid. He stated that he kept the special documentation in deposit at the committee’s request. I think he is guilty through a logical analysis of the evidence.

**Justice Cecilia Sosa Gómez**

I also found Felipe Guzmán guilty for the following reasons. First, I disagree that because the bidding process occurred under legal circumstances the company could have benefited without having had to establish a connection with Mr. Guzmán. He had the benefit of knowing the terms under which the bid was developing. There is also a connection between Guzmán’s spouse, the check, and Space International. The wife’s testimony, which proves this connection, is important for a guilty pronouncement. Of course, a mock trial is a valuable means of expression. It is very enlightening to learn the approaches of magistrates from different countries to a case because it joins us and shows the way we deal with the elements before us. We have found Felipe Guzmán guilty.
Part 5

Human Rights
Development, Norms, and Citizen Security
Application of Norms of International Law and of the Jurisprudence of the Inter-American Court of Human Rights

Justice Cecilia Sosa Gómez
President of the Supreme Court of Justice of Venezuela

In the first summit we attached special importance to the validity, promotion, protection, and respect of human rights. We also showed support for the jurisprudence of the Inter-American System of Protection of Human Rights because this jurisprudence is the region’s primary source on human rights. In preparation for the second summit we decided to do an in-depth study of the application of the jurisprudence of the Inter-American Court. This jurisprudence is important because for the first time in the history of international human rights, a person’s specific procedural capacity is recognized. The procedural capacity of the individual to present petitions, including accusations of violations of the American Convention on Human Rights before the Inter-American Commission, is a matter of law. The recognition by the state of the competency of the commission to hear these cases is not necessary, whereas a state pronouncement of acceptance of the competency of the commission is required in the case of interstate accusation hearings. This is evidence of a broad criterion in the Inter-American system for the procedural quality of the individual, which should be valued in a positive manner. In the European system, the opposite is true for such procedures.

Interaction between internal law and the Inter-American system

In many Ibero-American countries, constitutional rank is accorded to human rights and consecrated in international instruments—a trend that has been strengthened as constitutional reforms have occurred in the region. The commitments assumed by the states by virtue of these international instruments generate obligations for all the branches of public authority—including the judicial branch. However, national laws are not necessarily subordinate to those contemplated in international instruments and international or regional entities are not a third review of decisions stemming from internal justice.

The preamble of the American Convention on Human Rights establishes that international protection is “of a conventional collaborating nature or complementary to that offered by the internal law of the American States.” Despite this complementary and nonsubstitutive nature of internal law, the American Convention on Human Rights has a self-executing nature and an immediate effect internally, dispensing with the range of rights recognized in the law of each country, even when such rights have not been consecrated in national legislation.

International commitments

Upon signing the American Convention on Human Rights, the states assume the obligation to:

- Respect the rights recognized in the convention.
- Ensure the possibility of the execution of rights by all persons under its jurisdiction, as evidenced in the Velásquez Rodríguez case of July 29, 1988, paragraph 166.

States sign the international instruments, which are subsequently ratified by the legislative branch. The judicial branch shares the obligation to respect and guarantee the human rights recognized in the convention. That guarantee greatly depends on the
decisions adopted by the judicial branch in two circumstances:

- In cases in which the presumed aggressor is a state official.
- When the presumed perpetrator of the transgression is an individual, in which case the international responsibility of the state would not be associated with the event.

Subsequently, the court has gone beyond these applications. When referring to the international responsibility that the application of a law that is contrary to the convention generates for the state, “the act should adjust to internal law does not constitute a justification from the point of view of international law.” (That was an advisory opinion given on December 9, 1994.) This interpretation strengthens the leading role that the judicial branch can and should fulfill as to the protection of human rights, especially with regard to the nonapplication of internal norms contrary to the international commitments assumed by the states.

**Inter-American Court and the judicial branch**

The working document on validity, promotion, and respect of human rights, which we have prepared through the work of the follow-up technical unit, indicates that human rights cases were the focus of most Latin American courts during the turbulent 1970s and 1980s. Since the 1990s the courts have received cases in which the violation of rights associated with judicial guarantees and due process has been alleged. Nonetheless, even in the first cases decided by the Inter-American Court, significant jurisprudence was set on the role of the judicial branch in protecting human rights.

Another topic that directly affects the administration of justice and for which the court has set precedent is the rule on exhaustion of internal recourses. This rule is a means of defense on behalf of the state within the framework of international law, which frequently presumes an intervention of the entities of the justice administration system. Nonetheless, this means of defense is not an absolute recourse. In the Velásquez Rodríguez case the court states that the exhaustion of internal recourses implies the obligation of the states to supply effective judicial recourses to the victims of violations of human rights (Article 25) and recourses that must be substantiated in conformity with the rules of legal due process.

In the same case the court set the limits within which the aforementioned rule should be understood, pointing out that the internal recourse to be exhausted should be whatever seems “adequate.” In addition to being adequate, it must also be effective—that is, capable of producing the result for which it has been conceived.

The compulsory nature of the resolutions of the Inter-American Commission are also relevant to the judicial branch, as stipulated in Article 50 of the Convention. In this regard, the court has set criteria in the cases of Caballero Santana, Genie Lacayo, and Loayza Tamaño. Therefore the recommendations of the commission generate commitments for the states and, once again, compliance with such recommendations frequently requires not only the intervention of the executive and legislative branches but also of the judicial branch.

The judicial branch is often limited to using habeas corpus and other legal guarantees in states of emergency to control the performance of other branches of public authority. This may be because of the past indiscriminate, abusive, and frequent use of the states of exception, especially during internal armed conflicts or under de facto regimes. Nonetheless, the Inter-American Court has clearly established that, in such circumstances, the protection of fundamental rights by justice administration entities acquires greater, not less, relevance.

In its advisory opinion of October 6, 1987 the court affirms that such guarantees include not only habeas corpus and other similar recourses but also “those legal procedures, inherent to the democratic representative way of government, established in the internal law of the party states as suitable for guaranteeing full exercise of the rights to which Article 27.2 of the Convention refers and whose suspension or limitation implies the lack of defense of such rights.”

With regard to due process and, in particular, the principle of *non bis in idem* the court has stated:

Contrary to the formula used by other international instruments for the protection of
human rights (for example, the International Pact of Civil and Political Rights of the United Nations, Article 14.7, which refers to the same 'offense') the American Convention uses the expression 'the same facts,' which is a broader term for the benefit of the victim.

The valuation of proof, of which the Inter-American Court has adopted a very broad interpretative criterion, is addressed in a sentence dated July 17, 1997:

The criteria for valuation of proof before an international court of human rights have special characteristics. This is not a criminal court; consequently, grounds for objection of witnesses do not operate in the same form. The investigation of the international responsibility of a State due to violation of human rights allows the Court greater range in the valuation of testimonial proof furnished in accordance with the rules of logic and experience.

The judiciary and the Inter-American Court

The table of Inter-American Court case law from the working document shows a trend by some states to cooperate more on the cases before the court that involve them. This attitude is evidenced in actions such as the denial of preliminary exceptions, agreement to abide by decisions in which the state recognizes its international responsibility, and suspension of dispute procedure after the opening of a friendly settlement stage. They are consonant with the maturing of our democracies and are evidence that it is possible to overcome defensive postures, characteristic of governments marked in some cases by authoritarianism.

The strengthening of a spirit of cooperation will depend on the democratic strengthening of our judicial systems in terms that are sensitive to civil rights and open to increased cooperation with NGOs. Cooperation between NGOs and the Inter-American System for protection of human rights could be strengthened when these entities are granted consultative status in the Inter-American sphere, similar to the status they have in the universal system.

The system is in a process of revision and reconceptualization. So far this process has been the responsibility of the organizations in the system and the diplomatic representatives of the governments of the region. The process also needs input from the judiciaries, which could make significant contributions to strengthening the system fundamentally in two aspects. The first contribution by the judiciary could be to reinforce the adjustments needed to align them with the new democratic reality of the region. The judiciary could also contribute to strengthening the system by accepting full responsibility for the problems associated with human rights violations inherited from the past.

Last, impunity has a national and regional aspect. The challenge for the region's judiciaries and the organizations of the Inter-American System of Protection of Human Rights is to rethink existing mechanisms of promotion and protection in an effort to settle this debt at the beginning of the next millennium. For this reason our discussions on reform of the Inter-American system at this summit are important.
Discussion on “Application of Norms of International Law and of the Jurisprudence of the Inter-American Court of Human Rights”

Dr. José Bruno Otero

It is universally recognized that peace, which is a social situation or process, depends on effective recognition and enforcement of human rights. It is not a peace that comes from violence or wars but from the recognition of justice. We must promote the development of our constitutions and the establishment of criteria for the executive and legislative branches on the promotion of human rights. The San José Pact and the Treaty of Rome from the 1950s contain lists of human rights to which new rights can be added. Jurists, judges, and justices of supreme courts are obliged to investigate human rights violations just as governments must recognize human rights. One of a judge’s missions is to investigate the creation of human rights in his or her capacity as creator of law within the constitutional framework.

We must send a message about educating judicial officials on human rights. In this hemisphere, we have the excellent case law of the International Court of Human Rights, the Tribunal of San José, Costa Rica, and the prestigious Inter-American Institute of Human Rights, which has excellent programs dedicated to judicial training in human rights and others.

Finally, I propose that we draft a declaration of the summit that reaffirms the obligation of judges and courts to apply human rights according to the constitution.

Justice Enrique Antonio Sosa Elizeche

In my country, human rights are constitutional rights. One of the purposes of our constitution is to make human rights effective. The provisions in the preamble are aspirations, and the main text contains specific provisions on the enforcement of human rights. The problem is the absence of regulations for some of these rights, which at times can be an obstacle for our judges. The burden of enforcing human rights falls largely on judges who have to apply them without regulations.

The right to a speedy trial is another human right. Everyone has a right to effective processes that offer immediate protection from violations of fundamental rights. We must develop systems that contribute to guaranteeing this fundamental right of prompt justice. This problem occurs worldwide, even in Europe. Although these countries have many judges and very efficient procedural systems, the problem of slowness is seen as affecting human rights.

Justice Fernando Enrique Arboleda Ripoll

In contrast to the recent past, judges are very aware of human rights in their work today. However, when there are accusations of shortcomings in the system of human rights in the judicial area, the impression is that the accusation is not generally against the judge, but against the procedural systems. As mentioned earlier, a comparative study on international instruments of human rights and the case law developed by the international courts responsible for their application, as well as the constitutional tribunals concerned about diffusion, would be valuable. Such a study would be valuable because there seems to be a certain injustice when this kind
of class action is brought in cases of alleged violation of human rights in the judicial function.

In Colombia the Attorney General is assessing the production of case law by the Constitutional Court on constitutional protection to ascertain users' perceptions of the judicial function of the state in fundamental rights, based on the decisions of the Constitutional Court. This could be an appropriate basis for a possible reform in this area.

Justice Armando Torres Paulo

The problem of a speedy trial within a reasonable period is receiving some attention in Portugal. Our system has strong guarantees for the defense of the accused. Our lawyers attempted to find all defenses imaginable, which led to a backlog in cases. It was necessary to find an intermediate point between minimum guarantees and the no less important need to be tried in a reasonable period. The problem of excessive guarantees is now being considered by the Portuguese Parliament.

An action in a trial court can take from six months to four years. When it reaches the next level, the process is faster because all the facts have been established. At the Supreme Tribunal a case is decided in two or three months maximum because it only applies the law. All the facts have already been condensed and all guarantees that adorn the case exhausted.

Another problem is that far too many cases reach the Supreme Tribunal, many of which are not important enough to be heard by a the high court. We are considering adopting the U.S. system whereby the Supreme Tribunal decides whether it will accept the case.

Justice Oscar Aramando Avila

In light of the approaching Stockholm World Conference, which representatives from all countries will be attending, the presidents and representatives of the judicial authorities of Ibero-America should call on international organizations and lender countries to consider the tremendous burden that debt places on the developing world. The Pope has said that these debts violate human rights. Most of the countries in the hemisphere are mortgaged to these organizations. Our declaration would strengthen the position of our representatives at the Stockholm World Conference to be held in May.

Justice Carlos Mario Velloso

We are living in an era of rights. There is no better way to guarantee fundamental rights than through the work of an independent judiciary. Therefore, in our region we must stress the need to strengthen the judiciary.

Justice Orlando Aguirre Gómez

Direct application of international regulations on human rights is very important. It is linked to the building of a juridical culture and makes instruments of cohabitation effective. All countries must have their own regulations by which judges and courts must abide. In Costa Rica regulations must be constitutional and not clash with the law. If judges doubt the constitutionality of internal regulations, they may consult the Constitutionality Court.

Another important issue is education. Knowledge of the rules of international law, treaties, and conventions is limited among judges. Training must include components that cover international law so that judges will be able to question the constitutionality of these provisions.

Justice Cecilia Sosa Gómez

The judicial systems and judges of Latin America often do not value international regulations because national issues take precedence or the information on court decisions has not been made available. We should appeal to judges to learn about the decisions made by the Inter-American Court on Human Rights and encourage judges to exchange information on judicial decision making within Latin America. The follow-up technical unit could serve as a source of rulings on human rights from the region's courts and place them on a Web site or send them to those without computerization. We should issue a statement about the search for cooperation mechanisms between the judiciary and NGOs to uncover the value of these organizations in the areas of development and operation of the judicial systems.
Justice Jorge Subero Isa

The Supreme Court of the Dominican Republic believes that freedom is humankind’s natural state and that the rights stated in the Constitution cannot be fully enjoyed or exercised unless people are free. Article 25 of the Agreement of the American Convention on Human Rights of San José recognizes constitutional protection, but there was nothing to regulate; in a February ruling of that same year, we recognized the existence of the constitutional protection as part of the Dominican Positive Law. Through a supreme court ruling we established a procedure to follow people who believed that their constitutional rights and legal rights were being breached. The current court’s progressive attitude on human rights was responsible for eliminating the inertia that had been prevalent since 1969.

Justice Jorge Eduardo Tenorio

Like last year’s summit, this summit can and should produce positive agreements, particularly in the area of human rights. Agreements should illustrate the importance of human rights to Ibero-American judiciaries. Our judiciaries have made great strides in human rights, even though we have not reached the ideal level. Impunity is in the middle of the human rights problem in this continent, even though the level of impunity has decreased over the years.

Justice Victor Raúl Castillo

I propose that the conclusion of this assembly compel judges to specific actions based on principles of human rights.

Justice Alba Luis Ramos Vanegas

Once all international pacts and covenants are ratified by our countries they become part of the internal law, but they also become part of our internal legislation. In Nicaragua Article 46 of the Political Constitution states that in the national territory each individual enjoys state protection and recognition of the rights inherent to human beings—unlimited respect, promotion and protection of human rights, and full validity of the rights according to the Inter-American Pact of Civil and Political Rights of the United Nations and the American Convention of Human Rights of the Organization of American States.

When Nicaraguan judges dictate sentences based on the Constitution, they are applying human rights norms to judicial practice, although they are unaware of it. Nicaraguan judges have identified several limitations to applying international law norms on human rights—a lack of documentation on human rights, development of basic principles in national legislation, and deep knowledge of international legislation, for example. The Inter-American Institute for Human Rights could play a role in educating judges on international human rights legislation. The follow-up technical unit could establish permanent communication and periodical transmission of instruments and decisions on each country from the International Court of Human Rights. Argentina recognizes human rights and gives them supremacy over local legislation. My recommendation would be for the countries of the region to include the preeminence of supranational legislation or international treaties over local legislation in their constitutions.
Victims' Human Rights

Justice Orlando Aguirre Gómez
President of the Second Chamber of the Supreme Court of Justice of Costa Rica

I will address the issue of victims of violence and human rights. The victims of violence have often been forgotten and sometimes practically excluded by the judicial systems, which repress violence while at the same time guarantee the right to due process. Universal juridical culture has been evolving positively in favor of the victim. The possibility of fully and not just formally intervening as parties in the proceedings must be acknowledged as a right. Victims must also be allowed to demand through simple processes in the proceedings compensation for damages. In all countries modern procedural codes have been rescuing this doctrine and have also been assigning a protagonist role to the victim.

First, the judiciary has an important role to play in guaranteeing citizen protection from official authority and individual abuses. Judiciary branches cannot ignore the great social changes or the shifting of power originating from conflicts. They must have enough capacity and effective presence in conflict situations by establishing limits and maintaining a delicate balance among the branches of government while remaining transparent. Sanctioning laws or penal laws are a state monopoly conceived of only to sanction delinquents' procedural rights, leaving the victim little or no participation.

Second, the judiciaries must establish simple procedural systems with minimal formality and without financial conditionings or bonds to obtain damage compensations. Because most victims are not familiar with the judicial system, the judiciaries must organize offices for victims where they can get advise, protection, and guidance in the exercise of their rights.

Third, victim intervention—through mediation, conciliation, and conflict solution—to solve judicial problems should be pursued. For this participation in the process and the eventual exercise of indemnity civil action to be effective, the victim must get free legal counseling.

Fourth, an organized indemnifying system for victims of crime is a fundamental right. Indemnification should cover the loss of current and future income, legal expenses, medical expenses, hospitalization, as well as funeral expenses and compensation for the pain and suffering undergone by the victim. Domestic violence against women and children, as well as the unequal treatment of women in our societies, have been seen increasingly as social issues deserving a reply from juridical laws.

The Convention on the Rights of the Child obligates states to adopt legislative, administrative, social, and educational measures to protect children against prejudice and physical or mental abuse with judiciary intervention. It is imperative to create specialized courts and legislation for socially and physically battered delinquent children. Unfortunately the economic factor has outweighed the importance of addressing this issue with special courts.

To conclude, we are faced with a problem of human development. If human protection is the first priority of the judiciary, undoubtedly other issues will receive lower priority. No poor country can progress except by promoting its human resources and establishing those systems and institutions that I have mentioned. We will not only contribute to rescuing a large part of our populations but to promoting their development.
Administration of Justice and Citizen Security

Justice Jorge Eduardo Tenorio
President of the Supreme Court of Justice of El Salvador

On April 20, 1998 a new criminal justice system that includes a predominantly oral and accusatory process was implemented in El Salvador. The new system has worked, but some of the institutions it has generated in the procedural order, as well as in matters pertaining to penalties, have been mislabeled as promoting crime. In El Salvador, the strengthening of a citizen's fundamental rights, the establishment of new jurisprudence, and the strengthening of the Supreme Court have caused an ultraconservative and simplistic reaction.

Latin America is immersed in an era of euphoria over the construction of democratic and social states under the rule of law. In the past two years the region has also undergone basic changes in its economic schemes, usually motivated by so-called neoliberalism. However, poverty, lack of attention to basic needs of the population, and the quashing of hope have become more patent and without reducing or eliminating the fiscal deficit, inflation, and other economic objectives. The states have weakened their capacity to confront growing citizen insecurity. Therefore, it is imperative to revise economic schemes so that security systems and the administration of justice receive adequate attention and reform.

Unfortunately the judiciary is often made a scapegoat for society's ills. In El Salvador, for example, those responsible for administering the security of the state frequently accuse the judiciary of alleged or real weaknesses. They also criticize the judicial branch for placing form and procedure above substantive and established truths, leading to the release of dangerous criminals and seriously jeopardizing public safety. Judges are accused of converting purely civil and mercantile obligations and debts into criminal offenses, placing people who are not delinquents on trial. Although some accusations have weak foundation, others have none, but the security apparatus converts all into the popular "truth." For their part, judges discharge all responsibility, sometimes even their own, on the investigative weaknesses of the state security apparatus. Judiciaries of the region must, therefore, clarify for the public that the content and approval of laws are determined by another branch of government, often resulting from political arrangements with no scientific basis.

I propose the following:

- Harmonizing and coordinating of the administration of justice and public security is one of the most urgent tasks required by the modern state. The state should provide adequate funds for the responsibilities of the administration of justice and public security.
- Giving immediate attention to the structural causes of offenses and the adoption of an integrated criminal policy. These are activities that cannot be postponed any longer. Occasional remedies and short-term measures, while necessary, can never be effective or efficient in eradicating or decreasing criminality to tolerable minimum levels.
- Reforming the state as a whole. Sovereignty, independence, and separation of powers must be revisited, not as obstacles, but as a means to developing an honest and efficient system of justice and public security.
- Ending the unnecessary conflict among the state institutions to eliminate criminal perceptions within the government.
- Strengthening judicial independence with financial and budgetary priority is essential.
Discussion on “Administration of Justice and Citizen Security”

Justice Cecilia Sosa Gómez

As for the rights of victims, Venezuela is to have a new code of criminal procedure that specifically establishes the rights of the victim. The victim will receive dignified and respectful treatment, minimum inconvenience from the proceedings, and safeguarding of intimacy insofar as it does not obstruct the investigation and protection of the security of the victim, his or her family, and witnesses who testify in his or her interest through the competent bodies. After the criminal proceeding the victim is informed of the results. The victim has the right to be heard before each decision involving the suspension of the criminal action and challenge the dismissal or acquittal. The victim does not need to have participated in the process to claim these rights. These guarantees and rights are established in the victim’s favor in the code, which will become law in July.

The criminal code establishes that the victim must be awarded a specific sum of money paid by the criminal if it reestablishes social peace. The amount is determined by the Tribunal based on the harm caused to the victim by the offense and the economic situation of the perpetrator. The compensation does not exclude an action for damages by the victim against the criminal. I wanted to tell you this because it includes the recommendations made by the president of the Supreme Court of Costa Rica. We are in the process of applying these normative provisions.

As for public security, courts take action after an offense is committed; their responsibilities are not preventative. This does not mean, however, that we are avoiding our responsibilities. Impunity is often mentioned, which is our responsibility, as contributing decisively to public insecurity. We should clarify the roles of public authorities for the public.

Dr. José Bruno Otero

I am going to talk briefly about the civil liability of the delinquent. In Spain delinquents, offenses, and misdemeanors carry civil liability. The delinquent has primary liability before the enterprise and the state.

On prevention, assistance is given to abused women, which is so common today in my country and others. The autonomous communities deal with this problem through a social assistance network that provides financial benefits and assistance for criminal actions. The Attorney General (Fiscalía) has also sent various circulars on this problem to prosecutors.

A institution in Spain that falls under the General Council of the judiciary recognizes objective liability for the abnormal operation of the administration of justice. There are many administrative cases in which compensation is granted for this reason. This compensation can be awarded for unjustified delay, for example, but the Supreme Tribunal has ruled that sometimes delay can be justified.

I am not in favor of the creation of special jurisdictions. Ad hoc legislation can be used in specific cases, but special jurisdictions should not be created because it would violate the jurisdiction of the judge as specified by law. No objective liability of the state can be recognized for every offense com-
mitted. In Spain, the only liability is contained in the laws, rules, decrees, and regulations that recognize economic or other kinds of indemnities.

**Justice Antonio Martí García**

I would like to speak about the rights of victims. The model statement of purpose of Spain's Law of 1882 reads:

In truly free peoples the citizen must have at hand effective means of defending and conserving his life, his honor and the interest of the inhabitants of the territory is help the State to exercise with complete freedom one of its most essential functions which is to punish infringements of the criminal law to reestablish the harmony of the law when it is disturbed, without ever sacrificing the rights of innocence, because in the end the social order is no more than the maintenance of the freedom of all and reciprocal respect of individual rights.

This law recognizes the legitimacy of the victim to have a public defense, present evidence, and participate in the execution of the decision. Legal aid integrated with economic and social assistance has been established in Spain with an emphasis on compensation for material damage caused to the principal residence, as well as assistance for health, study, transport, food, residence, and information. In addition, state assistance is available if the delinquent cannot pay after the final decision.

**Justice Jorge Leslie Bodes Torres**

We are progressing on the rights of victims in the criminal process, which may even be institutionalized. In places where rights do not exist, the interpretations of the judges must contribute within the framework of the law to creating a space where the victim can defend his or her rights. We must give the victim the right to present evidence in the criminal trial, but even more to take criminal action as a third party or to appeal decisions. As for compensation, in Cuba the Compensation Fund, a 60-year old institution attached to the Ministry of Justice, is responsible for collecting compensation from the sanctioned party and paying the victim the indemnification fixed by the court, which prevents complications.

**Justice Cecilia Sosa Gómez**

In the penal aspect the new code must establish all rights simply in regulations such as indemnification, accusation, and with or without adhesion to prosecutor accusations.

In criminal law, if the prosecutor, for instance, decides to file an investigation because there is no proof, the victim must be notified so that he or she can appeal directly to the judge.

Concerning public defense, the right of the accused to be assisted by a public defense lawyer from the beginning of an investigation is important. Regarding civil law, the attorney general is charged with the obligation to exercise civil action on behalf of the victims who do not have any means to do it personally, and the victim is entitled as well to require it. Also, in all our states, under civil law, there will be an Office for Assistance to the Victims, headed by a prosecutor and an assistant lawyer.

**Justice Fernando Enrique Arboleda Ripoll**

I would like to speak about victims' human rights, especially those relating to intrafamily violence. Women are by far the most victimized in our society. In Colombia, with the issue of Law 124 in 1996, a new category of crimes was created for intrafamily relationships. Because of its importance, it was attached to the competence of circuit judges. This had two effects: it generated congestion for this category of judges and prosecutors and it multiplied competency conflicts. In some instances the penal solution is a factor of additional problems. Many judges understood that this new regulation remained incorporated in the traditional regulation of crimes against the family under the Criminal Code. This led to jurisprudence in the resolution of this type of conflict. However, it was clarified later that the legislator was interested in guiding the family relationship as a specific judicial good, not related to personal integrity. Consequently, the prosecutor's and the criminal judge's intervention alters or obstructs the couple's relationship. The victimized woman is forced into contacting the prosecutor or the Insti-
tute of Family Welfare to present the claim. At the institute poorly trained defense lawyers recommend that the woman go immediately to the criminal judge for a speedy resolution of the conflict.

**Justice Oscar Armando Avila**

I agree that there should be specialized courts for intrafamily violence. In Honduras the recently approved Minor Jurisdiction Law and the Minor and Adolescence Law intend to solve the Central American problem of indigent children. The region must find adequate mechanisms at these summits to solve this problem, which increasingly affects all countries. Our governments and international institutions meeting at Stockholm should be encouraged to address the issues we raise at this summit.
Complexities and Social Consequences of Drug Trafficking
A comparative analysis of drug trafficking legislation in Ibero-America requires a formidable effort. Nonetheless, in work document Number Four titled "Drug Trafficking and Its Consequences" the follow-up technical unit synthesized drug trafficking legislation, characterized it with various criteria, and arrived at several conclusions as to what the legislative developments have been in Ibero-America. The conclusions, within the framework of the measures proposed by the Caracas Declaration, include the following:

- Developing an international instrument.
- Adopting an international instrument to combat drug trafficking.
- Compiling the typologies identified in the various statutes and laws in effect in each of the nations included in Ibero-America.
- Creating an Ibero-American court to deal with drug trafficking offenses identified in normative instruments.
- Establishing an Ibero-American network of Supreme Courts and Tribunals that will permit the exchange of concrete information on cases that transcend the national ambit.
- Continuing to document comparative legislation on drug trafficking and its consequences, to be stored in the database being developed by the follow-up technical unit.
- Developing a set of guidelines with the measures and mechanisms to achieve the effective protection of Ibero-American judges and magistrates in charge of drug trafficking cases in the respective countries.

A discussion of drug trafficking legislation in Latin America is important in light of the high social costs that have resulted from judicial intervention in the regulation of drug trafficking. In Colombia during the peak period of the confrontation between the state and the drug trafficking groups, about 362 judges lost their lives. Furthermore, the trend to judicialize social conflicts has given rise to the social perception that those responsible for control policies—not only in the drug trafficking area but in many others—are solely the judges. Some believe that the phenomenon can be eliminated with the intervention of the judiciary. As these ideas take root, some institutions tend to shirk on their responsibilities in combating drug trafficking. The judiciary's intervention is not in prevention but in application of the law.

We first determined the factors in the legislative process for each country. We found that, aside from the significant conditioning elements corresponding to each of the countries, the causes of drug trafficking and regulations to address them vary. For example, Colombia had unconventional legislation during the early 1960s and early 1970s, whereas neighboring countries had stronger regulations. As a result, drug trafficking increased in Colombia under cover of greater permissiveness, tolerance, and weakness in regulations. This is the first consideration for standardization and generalization of legislation.

The Sole Convention on Narcotics held in New York in 1961, its Modification Protocol (1972), the Convention on Psychotropic Substances (1971), and, more recently, the Vienna Convention of the United Nations against the Illicit Traffic of Narcotics and Psychotropic Substances (1988) have been the foundation of drug trafficking legislation. These
conventions determined the adoption of narcotics statutes or statutes against the trafficking of narcotics, where regulations are comprehensive and correspond to specific guidelines, governed by the need to control the phenomenon and its severity. These statutes are characterized by provisions that refer not only to prohibiting and punishing drug trafficking and related behavior, but also by procedural norms intended to make judicial intervention effective. The statutes also contain regulations of other types, such as the organization of administrative entities that control consumption and rehabilitation of consumers.

Those universal instruments are complemented by other agreements, such as the South American Agreement on Narcotics and Psychotropic Substances and its First and Second Additional Protocols of Buenos Aires (1973), and more recently the Lara Bonilla Agreement adopted by the member countries of the Cartagena Agreement for the Prevention of the Illegal Use and Repression of the Illicit Trafficking of Narcotics and Psychotropic Substances of Lima (1986). Those instruments impact the legislation produced by the states as a reference in the standardization and unification process of the legislation. As a result, many entities in countries of the region have emerged in the administrative field, generally combining the functions of entities already established, such as the ministries of health, education, and development.

The commitments agreed to in the Vienna Convention are applied only partially. For example, until last year Columbia issued a statute on the laundering of assets, a redefinition with regard to penalties. The statute strengthens sanctions and establishes the exercise of the action of annulment of ownership as an action of expropriation of goods resulting from drug trafficking, independent from and parallel to the actions to establish criminal liability.

Similarly, these statutes use certain mechanisms to ensure the efficacy of the statute itself, linking the behavior of the operator or applicant of the statute. For example, Article 39 of Law 30 of 1986, the Statute on Narcotics of Colombia, establishes a particular type of prevarication for the judge, the judicial official and, in general, the civil servant, who, when performing the function of detection, persecution, investigation, carrying out of proceedings, judging, or executing the sentence of a drug trafficking offense favors those implied. Something similar occurs with a regulation in Bolivia. It views judges who let procedural terms lapse without taking due action or who delay proceedings on drug trafficking and resulting behavior as accessories to or endorsers of the crime.

Control of this type of criminal phenomena is timely and effective, but also becomes a criminalization factor for judicial officials. Compliance with procedural terms in many cases does not depend on the control that the judicial employee may have of the proceeding; it depends on other types of events. The investigation and judging activity of a criminal matter, and particularly, a criminal matter of these connotations, makes the judge depend on other instances, other offices, services of experts, and verification by the lab of the type of substance in question.

Establishing legislative developments in Latin America implies examining the content of the international instruments that serve as a reference within the framework of standard legislation and influence implementation in the different countries of the region. Because the Vienna Convention is the most elaborate international instrument, it is worthwhile not only to look at its configuration, but also the guidelines it establishes and the developments achieved.

The analysis of the follow-up technical unit to recommend the adoption of a general instrument, the perfecting of the procedural system applied to the persecution of drug trafficking, and the ongoing training of the judge in applying sanctions to this type of behavior could also be complemented with an examination of practical events. Such an examination would cause a confrontation between the text of the law and the reality in which it operates. Because drug trafficking is not legislated only in the areas of persecution and control of illicit practices, but also in consequences with a social content, and is thus regulated.

An examination should include other instances that intervene in the attempt to control this phenomenon, such as the police. In addition, they carry out activities that, on many occasions, do not reach judicial instances. In Colombia, for example, the judiciary has no control over the Anti-Narcotics Police.

One of the effects of drug trafficking is corruption, visible in the confrontations various autho-
ties are experiencing in their pursuit of political careers. Regulation of this area also warrants examination.

It is likewise very important to include the strengths and weaknesses of international cooperation in drug trafficking. This will be included in the proposal that the follow-up technical unit presents for our consideration to define procedural patterns that will give an adequate level of standardization to the narcotics control policy in the area. For example, in extradition cases it is important to know the validity of the agreements, bilateral and multilateral treaties, and the exercise of reciprocity, which the Vienna Convention indicates as the source for the application of this type of instrument. International cooperation will be essential to confronting drug trafficking in the region.

One of the most important uses of an examination of drug trafficking legislation is that it allows us to separate responsibilities and to clarify responsibilities of judicial authorities. The intervention of judicial authorities is limited by time, opportunity, and resources. This realization should be considered at the summit.
Cuba does not have a drug addiction phenomenon because the island does not produce coca leaves and its climatic conditions only allow for the growing of marijuana in the eastern region where, on occasion, it appears. Furthermore, since the revolutionary process begun on January 1, 1959, the social disgraces and vices inherited from the previous era have been eliminated. Consequently, there is no consumption habit among the population.

Following the economic reorganization and subsequent economic blockade by the United States, Cuba began to develop new sources of income, such as tourism, and adopted other economic measures that have fomented a sustained increase in the gross national product, especially over the past five years. However, this opening up to trade and tourism has, in turn, implied an increase in traffic within our borders. Thus international drug dealers seek to use the island as a transfer point to get the drugs to other countries.

A rise in drug consumption has also become evident, especially among young people. The country's authorities, led by its political administration and National Drug Commission, have every intention of eliminating this problem and maintain the situation at levels that can be efficiently controlled.

On March 15, 1999 revisions to the Criminal Code went into effect that, among other measures, establish stricter sanctions against drug trafficking. Drug trafficking responds to the same mechanisms as capitalism. It is based on the same market laws that prevail in other spheres of the economy; it is just another enterprise that is looking for the enrichment of its owners at any cost.

The confrontation of these social phenomena cannot be limited to the state. The struggle against drugs and, in particular, the struggle to achieve a healthy development of children and adolescents, requires profound changes in the society, serious transformations in the living conditions of our people, and proper and decisive policies from the state.

Cuba has the legal instruments to attain these proposed objectives. With regard to drug consumption among minors, we have withdrawn those cases where infractions are committed by youngsters below 16 years of age from the penal system. These cases are handled by a tutelary system for minors, created in the country as a legitimate aspiration of the legislators who, in the 1930s, drafted the now annulled Social Defense Code. The system for attending to minors with behavior problems takes preventive action and gives them social care. It is directed jointly by the Ministry of Education and the Ministry of the Interior. The minor is evaluated by psychologists, teachers, sociologists, and lawyers, and appropriate measures are adopted so that he or she is either incorporated in specialized centers, placed in schools with appropriate personnel for treatment, or placed in a school especially designed for those who present deviations in conduct. Adolescents between 16 and 18 years of age are given individualized penal treatment, as are those between 18 and 20 years of age who have diminished capacity and penal responsibility.

In 1998 no known cases of youngsters below 16 years of age who were involved in drug consump-
tion or participation in production or trafficking problems were registered. Cuba does, however, have cases of minors with problems of ingestion of psychomeditation together with alcoholic beverages, but it is not a large social problem. In 1998 there was no evidence of international drug trafficking among youngsters of 16 to 20 years of age. There are only a few cases of drug possession, a total of 10 youngsters in this category were processed and sanctioned for possession of drugs.

Additionally, Cuba's penal legislation offers protection to minors with drug problems. According to recent modifications introduced in the Penal Code by the National Assembly of Popular Power in Cuba, sanctions established for drug trafficking and drug possession offenses, as well as corruption of minors, were increased. Jail sentences were set at 7 to 15 years for those using a minor for any form of drug trafficking or illicit consumption of drugs. Similarly, the penal text obliges those who have minors under their jurisdiction and care to be concerned with their education, maintenance, and assistance; if they do not comply, they could be punished with jail sentences of three months to one year or fines, or both. In Cuba no minor is left unattended because there is a system of housing for minors with no filial protection, where much love and specialized personal care make up for the absence of a family. The state provides the funds needed for maintenance and education until the minor comes of age and begins to work.

Furthermore, the social organizations and institutions that bring the citizenry together in groups also play an important role in influencing the family and caring for minors, especially the Federation of Cuban Women, which assists minors and their families. We have not yet recovered the levels of the previous decade nor the objectives we have proposed, but we have the tools to successfully combat drug-related problems among minors.

In conclusion, it is not possible to adequately protect minors from the degrading influence that the drug activity has on them if the confrontation of the delinquency phenomenon is not successfully achieved at the societal level and conditions for the subsistence and healthy development of these minors are not created. As drug trafficking and consumption of narcotics become more rooted and diffused in society, minors will be more exposed to the nefarious influences and actions of drugs. The confrontation of the drug phenomenon and the preservation of a healthy childhood and youth are intimately related to the conditions of society's material and spiritual development and the degree of equality and social justice it possesses.
Drugs and the Bridge Countries

Justice Armando Figueira Torres Paulo
Vice President of the Supreme Tribunal of Justice of Portugal

Drug trafficking is a global phenomenon that affects, with greater or less intensity, all nations, social classes, and age groups. Drugs endanger social peace, state security, institutional activities, public health, the economy, and even international relations.

In the European Union during 1980–90, data on consumption of illegal substances stabilized or decreased; however, the number of deaths attributed to drug overdose and drug-related illness increased considerably, expanding among certain age groups and social categories. Among children between the ages of 15 and 16, more than 4 percent had already consumed one type of illicit drug. Cannabis continues to be the illicit drug most consumed in the European Union. Between 5 and 30 percent of the population has experimented with it at least once. At least 1 percent of the population of the European Union has consumed heroin. Cocaine continues to be consumed, in the majority of cases by a socially integrated group of young people, and close to 3 percent of the population has experimented with this drug. In addition, the world has been witness to a pronounced increase in synthetic drug use, such as amphetamines, LSD, and Ecstasy—the preferred drug of young people in the European Union. Crack, a new drug, is derived from cocaine and has also been adopted worldwide, especially in the United States. Its effect is quick and intense, provoking overconsumption and, consequently, very violent behavior.

The main drug producers are in the Near East—Lebanon, Southwest and Southeast Asia, Afghanistan, Iran, China, India, Thailand, and Vietnam—and in Latin America—Mexico and Colombia. The heroin route between Southwest Asia and the markets of Europe typically covers Afghanistan and Pakistan, crosses Iran to southwest Turkey, and from there travels to the main consumer countries—Belgium, France, Germany, Holland, Italy, Spain, and the United Kingdom. Since the fall of communism countries of Central and Eastern Europe have been used both as storage and as transit points for drugs.

Heroin is produced mainly in Asian countries, in an area known as the Golden Triangle. Thailand, because of its strategic location and good means of communication, continues to be the main transit country for heroin to international markets. Taiwan (China), China, Malaysia, Singapore, Indonesia, and the Philippines are also transit centers for heroin destined to North America, its main market. The United States also consumes heroin coming from Mexico and Colombia.

Cocaine, produced mainly in Peru, Colombia, and Bolivia is placed in circulation via Brazil and Venezuela, on its way to the United States and Europe. Transportation to the United States is by sea, air, and land. Cocaine is transported to Europe by sea through the islands of the Atlantic—Azores, Canary Islands, Cape Verde, and Madeira. Portugal, a consumer country, is likewise a transit point for cocaine to other countries of Western Europe.

In addition to this constant flow of drugs, there has also been an increase in the number of laboratories for the processing of cocaine in Europe. In 1992 several labs were dismantled in Germany, Italy, and Spain. Many countries on the African continent, among which Nigeria stands out because of its geostrategic location and the low standard of living of its population, are an important transit zone for cocaine destined for Europe.
Cannabis, in the form of hashish, is produced mainly in Morocco. Close to 2,000 tons of cannabis are produced each year, making this country the main provider of hashish in the world. The drug circulates through the countries of the Former Soviet Union because of their geostrategic importance and their vicinity to Afghanistan, China, Pakistan, and Turkey.

The consumption of drugs in the countries of the former Soviet Union has increased dramatically. This is a new and growing market of millions of consumers that has given rise to active criminal associations. The same is occurring in the countries that have traditionally been producers of narcotics and transit points; drug consumption is on a constant rise and there are signs of a propagation of infectious and contagious diseases that prove the existence of a true epidemic.

Drug trafficking networks have modern and sophisticated technological and information media for attaining their objectives. They know how their political systems function and understand the preferences and needs of their consumers. Because drug trafficking is a global problem, the commonalities among countries are more numerous and important than the peculiarities.

Only concerted cooperation among states, based on solid information, can confront the seriousness and complexity of this worldwide scourge. Cooperative activities are occurring mainly under the auspices of the United Nations. In addition to other instruments, the United Nations approved the Convention against the Illicit Trafficking of Narcotics and Psychotropic Substances of 1988, which, for the first time, highlighted the devastating and growing effect of the trafficking of narcotics and psychotropic substances and their effects on the economic, cultural, and political bases of society. The seriousness of the behavior linked to the trafficking of narcotics, such as money laundering, has also been accentuated.

The European Union, of which Portugal has been a member since 1987, has taken several steps at the international level to combat drugs; it signed the United Nations Convention against the Illicit Trafficking of Narcotics and Psychotropic Substances and introduced an allowance for fighting drug trafficking and consumption in the European Union's budget. It published regulations and guidelines for avoiding diversion of certain substances for the illegal manufacturing of narcotics and psychotropic substances and and use of financial system for money laundering. The Maastricht Treaty of 1993 instituted the basis of an integrated global approach of the European Union, which strengthened the Amsterdam Treaty. Article 129 of the Treaty of the European Union establishes that the Union will contribute to the prevention of drug dependency by encouraging research, education, and dissemination of health-related information about it.

The member states are obliged to cooperate among themselves in articulating policies and programs in this area to the European Commission. The European Union will promote cooperation with other countries and international organizations, especially the United Nations, that have developed a global strategy for the struggle against drugs. The member states have exclusive power with regard to judicial, customs, and police cooperation on drug dependency. The European plan of action for 1995–99 is to reduce drug trafficking by cooperating with other countries, developing information, and coordinating activities among member states. The financial resources subsidized by the European Union for the struggle against drugs have increased continuously from 5.5 million ECUs in 1987 to 54 million ECUs in 1996.

In conclusion, it is essential that the various states strengthen their security systems to confront the increasing power of the international trafficking networks. This necessarily implies the reinforced and articulated performance of the different police entities, especially Interpol and Europol, based on rigorous information systems and efficient border control within the parameters of their international obligations. International judicial cooperation on penal matters is equally important. The judiciary must act with severity in all matters related to money laundering, and issues related to bank secrecy must be reconsidered. Drug trafficking is a crime against humanity that transcends the jurisdictional scope of each country; consequently, it is essential that a supranational criminal court be created.

Because the drug producing and transit countries tend to be developing countries, the international community should increase its support of their
sustained economic growth and development of the greatest possible number of alternate crops. Internally, each country must effectively combat the supply and dissuade the demand for drugs through education and preventative campaigns. Last, the drug addict should be increasingly considered a human being with an illness who needs treatment and not repression.
Financial Offenses: Money Laundering

Justice María M. Naveira de Rodón
Associate Judge of the Supreme Tribunal of the Puerto Rico Free Associated State

The purpose of this presentation is to describe briefly the money laundering process, to explore related problems, to alert countries with regard to its consequences, and to suggest several alternatives to avoid its inconsistent growth and globalization.

Money laundering is an international problem that affects us all adversely. Its tentacles envelop society and its poison tends to subvert not only the government but society as well, by eroding values and establishing corruption as the best way to do business. Despite the fact that banks and other financial institutions are often the primary means through which this activity is carried out, all sectors in society are affected. Money laundering mobilizes an estimated $120 to $500 billion dollars a year.

In general, money laundering is the process whereby an effort is made to conceal the origin of income to give it a legitimate or legal appearance in form. The importance of this link in the delinquency chain cannot be underestimated. After all, how can the leaders of an underground economy continue to successfully expand their illicit business if they don't have the mechanisms to easily move their money on a worldwide basis?

With the growth of the money laundering industry a new type of delinquent has emerged. These people who manage the laundering of funds are normally professionals, such as lawyers, accountants, investors, and bankers. They are not easily identifiable because we are not yet able to detect them.

The money laundering process is complex and has multiple partial operations, all of which are necessary for its success. Regardless of the method used, there are three essential basic steps—placement, concealment, and integration. Placement implies converting the funds derived from a delinquent activity into a form that will allow its introduction into the mainstream economy. This is the most crucial stage for the main actors of the money laundering enterprise. The first practical problem they confront is how to move massive amounts of money, usually in small denominations. The easiest and simplest way to move money around the world is through a financial institution. It is then necessary to find a mechanism to masquerade the money and move it, usually involving innumerable countries, which makes the money very difficult to trace.

After placement, the second stage is concealment. Investigation and criminal processing efforts have found this stage very difficult because of the international and global nature of banking. The main characters in the money laundering process are often successful in concealing the illegal origin through electronic transfers from overseas banks.

Once the money reaches the integration stage, it is undetectable. The money is moved into the normal economy and used in any business that seems to be legitimate or for the expansion of a series of illegitimate businesses.

In the 1970s there was a dawning of awareness in the United States that organized crime was taking hold of society and seizing the most important institutions, especially financial institutions. The first thing that occurred to them, the first legislation aimed at dealing with money laundering, was to attack it through banking institutions because banks were the best place to convert illicit funds into licit funds. Banks were asked to provide information about any transaction in cash exceeding 10 thousand dollars, with the dual purpose of detecting sus-
picious transactions and dissuading bankers from assisting money laundering schemes. In this way they penalized the bank official, not the delinquent. The authorities soon realized that regular, normal laws used for dealing with fraud and misappropriation of funds were inadequate for dealing with money laundering agents. The authorities then began to do their own investigations and approved another series of laws to try to deal with this problem.

The second type of legislation was directed more toward the money laundering agent. In the second stage, both the agent and the bank official were aware of the fact that the money was derived from an illicit business. Authorities then had to prove, usually with circumstantial evidence, that a crime was committed. They approached the problem from the point of view of interstate transactions, which they complemented with reports to the Internal Revenue Service for transactions of less than $3,000. They were looking for mechanisms to help them with their investigations. Unfortunately, organized crime usually stays a step ahead of the authorities. We must reverse that process.

Technological advancements, such as cybernetic banking and disposable telephones, make it difficult or impossible to detect criminal behavior. Mechanisms that counterbalance technological progress must be established to avoid misuse. Laws are useless unless all the countries in the world recognize that borders do not exist for criminals. Consequently, they have no problem going from one country to another. But we can pose problems to the authorities for them to investigate. We have to erase the concept of traditional sovereignty.
Discussion on “Financial Offenses: Money Laundering”

Justice José Andrés Troyano Peña

A claim was filed against the Panamanian Supreme Court because an article or law that was issued to curb money laundering and drug trafficking was considered unconstitutional. There was an article in that law that authorized telephone tapping. The Administration Attorney or the Attorney General of the country must intervene in this type of claim. The Administration Attorney determined that the article was unconstitutional and had to be annulled. Fortunately, we were able to have the article declared constitutional, thus permitting telephone tapping in specific cases and after complying with several requirements.

There are many innovations and we must keep a step ahead, and one of those steps is precisely to try to place ourselves in the reality in which we live and adapt the laws to that reality. Only then will we be truly aware. If possible, I would suggest that a declaration be drafted to this effect.

Justice Enrique Antonio Sosa Elizeche

Paraguay also has a new law incorporated in the penal code, which not only represses as a crime the trafficking of dangerous drugs and psychotropic substances, but also proposes the prevention of the crime—the follow-up of improvement measures such as medical treatment and rehabilitation for drug addicts. Sanctions can be severe with jail sentences of 5 to 25 years.

In October 1997 Paraguay adopted legislation in the penal code about money laundering. However, based on previous presentations today, I question the new legislation’s adequacy. It represses anyone hiding an object derived from a crime or a punishable act carried out by a member of a criminal association or a punishable act concerning drug trafficking, and establishes sanctions. But I think this is a complex problem and there is a lack of knowledge about money laundering. Perhaps we should be informed of those mechanisms so as to detect when we are in the presence of a phenomenon of this nature. There must be cooperation not only to combat money laundering derived from illicit activities in industrial countries, but to recuperate the money so badly needed and dishonestly obtained in Latin American countries at the expense of national funds.

Justice María Naveira de Rodón

Criminals use many methods to launder drug trafficking money. One way is to buy expensive goods from common citizens. Another way to conceal the origins of money is a type of money laundering scheme in reverse. For example, a company or individual may use licit money but hide the origins because the way in which the money is used is illegal. The money may be used to buy public officials, called a slush fund in the United States. A third type of money laundering scheme is beneficial and is used by the CIA, the FBI, and Interpol to establish financial screens for particular activities. There are innumerable examples of how the criminal world manages to introduce its cash into the regular economy. Some countries may have an economy that is thriving because it is maintained by an underground economy controlled by drug traffickers.
Part 7

International Network for Judicial Knowledge Sharing
Observer Comment

Justice Ajmal Mian
Chief Justice of the Supreme Court of Pakistan

The system of administration of justice in Pakistan has its roots in the Constitution and laws of the country. The Constitution provides for a single and hierarchical system of administration of justice. The highest court of the land and the court of ultimate appeal is the Supreme Court. Four High Courts are the principal courts in the provinces, followed by the subordinate courts, which exercise civil and criminal jurisdiction. The Federal Shariat Court has limited jurisdiction on appeals against subordinate courts in a few criminal matters and examines cases related to injunctions of Islam. Appeals against its judgements lie before the Shariat Appellate Bench of the Supreme Court.

The Constitution also provides for the division of powers and functions among three state organs—the legislature, executive, and judiciary. The Constitution describes the composition, structure, powers, and functions of each organ so as to demarcate the limits of their operation, and mandates the judiciary to oversee the performance of each.

The Constitution of Pakistan envisions an independent and impartial judiciary. Several articles of the Constitution, in particular the Objectives Resolution, Article 2-A and Article 175, envisage such independence. The independence of the judiciary is necessary for enabling access to justice and the exercise and enjoyment of fundamental rights and freedoms. The Constitution contains detailed provisions with regard to the organization and composition of the superior courts, including the qualifications for appointment of judges, procedure for elevation, terms and conditions of service, and even the grounds and methodology for their removal.

Constitutional provisions are to be construed in a manner that ensures the independence of the judiciary. Interpretations of constitutional provisions should be dynamic, progressive, and relevant to society. Interpretations should not be narrow and pedantic.

The Constitution guarantees most of the essential fundamental rights and freedoms. The list of such rights covers all the essential rights, including civil, social, economic, education, and political rights. These rights are guaranteed to all individuals, irrespective of caste, color, class, or gender. It further provides for the rule of law, equality before the law, and equal protection under the law for all individuals.

Through successive judgements, the Supreme Court has sought to ensure compliance with the principles and rules of the Constitution. The purpose is to ensure the smooth and harmonious functioning of the trichotomy of powers, which is necessary for the preservation of democracy, respect for the constitutional provisions, and strengthening of political, legislative, and judicial institutions in the country. It is through such principles that governance will improve, leading to economic growth, development, and prosperity for the society.
Update on the Network

Dr. Alvaro Leal
Manager, Supreme Court of Justice of Venezuela Modernization Project

The purpose of this section is to provide an update on the development of a network for interconnecting the judiciaries in Ibero-America.

Among the conclusions of the First Summit of Presidents of Supreme Courts and Tribunals of last year was an analysis of creating a network for interconnecting the supreme courts and tribunals of Ibero-America. As part of the work done this year, member-delegates of the follow-up technical unit have been sending information to Caracas that has been compiled to establish a database. Data is complete for two of the four topics discussed today—drug trafficking and human rights—and almost complete for the remaining two topics—corruption and judicial organization. Using the database, a prototype was prepared to give you a graphic explanation of how the network might function.

Before beginning, the last thing I want to say is that the objective of the network is that it function with two interfaces: a private and a public interface. The private interface should be connected via a private network to the supreme courts for the exchange of specific information on particular cases or problems, and the public interface will permit the general citizen to access the database via the Internet. IUDICIS is the homepage, which will be in three languages—Spanish, English, and Portuguese.

I will demonstrate the prototype by using the connection in Spanish. From the main page, you may choose private access, restricted to court members, or public access. Pages with public access have general information on the network, the scope of the project, its objectives, and the member countries of the network. Information on the network itself, so that the members may be informed of any improvements, or direct contact via e-mail with the network administrator, may also be available.

There are four topics: judicial organization, corruption, human rights, and drug trafficking. Choices include studies and statistics on a topic, news, organizations related to the topic—in this case, organizations related to human rights—for example, chat-style discussion forums on the Internet, or a mailing list whereby all members may receive the same.

Members using the site may also do a search of the database, which is loaded with information sent by the delegates to the follow-up technical unit. A search of drug trafficking in Argentina, for example, reveals Law Number 23.737, "Offenses against Public Health and Narcotics," a description of the law, and some comments by the technical unit delegate.

In the category of studies and statistics, information has been used to make comparative charts. We are going to give to you, for example, a comparative chart of the types of sanctions contemplated in the legal ordinances of the network's member countries, based on the information that has been supplied. For example, legislation and sanctions covering disqualification in Argentina, Bolivia, Colombia, Costa Rica, Spain, Guatemala, Mexico, Nicaragua, Panama, Paraguay, and Peru are available.

Users with restricted access may view related data that is available for the public. Members of the court, by introducing the password, may enter the private zone where they can send or receive safe (encrypted) mail, participate in video conferences with magistrates, consult the private mail directory of member mag-
istrates, or have access to news that is of interest to the members, but not to the public.

This prototype was prepared with the assistance of the World Bank’s Knowledge Management Group in cooperation with the Venezuelan company, Fabricart. Most important, the network would not have to be limited to the Ibero-American countries; it could be broadened to include other international countries, such as Finland, Romania, Singapore, and the United Kingdom.
Part 8

Closing Comments
and Conclusions
Closing Comments and Conclusions

Justice Cecilia Sosa Gómez
President of the Supreme Court of Justice of Venezuela

I would like to leave you with a final point of reflection. As I said in my opening statement, it is unfortunate that we meet during a very agitated and violent week in Latin America and the world. These events affect some of us more directly than others, nonetheless, we feel obliged to use our power to change the world that is using violence to settle problems. Mr. Magistrate, Vice President of the Supreme Court of Justice of Paraguay, please accept our institutional support.

In his inaugural speech, the President of Venezuela emphasized that justice is the road to peace. He also stated that we must transform the administration of justice to solve the problems of our people. Now we should ask ourselves: where are we? What have we achieved to respond to the needs of our times? While we were organizing the summit last year, I thought that the forum should arrive at concrete conclusions and agree to tangible actions that would improve our countries. All courts share this same concern and have acted in unison to perform our responsibilities by appointing a delegate and the follow-up technical unit to ensure compliance with the agreement reached a year ago. We have concluded a year's work to face new challenges.

Furthermore, through the accomplishments of the summit we have formed a new team to attend to the challenges that we face in our countries. After this experience it will be much easier to help each other and work toward peace for our people because we will apply the lessons learned by our colleagues. The challenges awaiting us on our desks will be studied from a comprehensive global standpoint.

The judiciary has traditionally been the most conservative institution in the state, perhaps because it is the balancing point of our societies. However, now the judges are seriously considering new directions to join the dynamic route of globalization. What justice will we administer in countries whose conflicts, contracts, and transactions know no geographical boundaries, if we cannot understand reality beyond our office windows?

The window is waiting for us with a view to the information highway. This network will allow us to communicate daily and exchange general information and information related to specific cases. It must supply the greatest amount of judicial information to citizens, guarantee transparency, and make judicial civil servant training in Latin America a reality. We have created a global virtual classroom called Juridics.

As judges we are the voice of law, the balancing point of democracy, and the hinge that joins public and private interests and guarantees peace and stability. In other words, we are the guardians of society. Only together will we turn this utopia of universal justice into a reality. Many of you had to travel across the world to attend the summit and I hope it has linked us in the same way that Latin American countries are linked.
Second Caracas Declaration, Caracas, Republic of Venezuela, March 24–26, 1999

We, the representatives of the Courts and Tribunals of Justice of Ibero-America, have gathered together to evaluate the performance of the actions to which we committed ourselves during the First Summit that occurred in March 1998 in the city of Caracas.

Persuaded by the need to follow-up on the commitments made in the First Summit and compelled in the meeting held in October 1998 by the delegates of the follow-up technical unit, we concluded to approach topics related to the independence and autonomy of the judiciary, such as the fight against corruption, validity, protection, promotion, and respect of human rights, and drug trafficking. We support the maintenance of the juridical order inspired by the democratic systems of our nations and respect for judicial activities and decisions as a fundamental premise of the validity of the rule of law.

We have reached the following conclusions:

**Autonomy and independence of the judiciary and cooperation among public authorities**

**Budgetary autonomy and independence**

1. We, the Chief Justices of the Supreme Courts and Tribunals of Justice of Ibero-America, commit ourselves to negotiate the incorporation of constitutional and legal regulations in our countries and the participation of judicial budgets in the national budgets, which will guarantee total autonomy for its planning and execution.

2. The autonomy and independence of the judiciary will be strengthened by mechanisms that will increase the judiciary's efficiency and ensure a fixed budgetary allowance.

3. Efficient management, formulation, and execution of the judicial budget legitimizes the budgetary autonomy of the judiciaries. Therefore, greater economic independence will imply a commitment to good management and planning. For that reason, the judicial budget must constitute an effective monitoring and reporting system, which will be achieved by applying the following criteria:

   a. **Good management.** The budgetary system must allow for the establishment of priorities, such as case load reduction and implementation of efficient economies. The information produced in reference to the budget must help managers make decisions and establish the relationship between the assigned resources and the volume of work of each court.

   b. **Planning.** Annual planning of the judicial budget should provide performance indicators during a cycle of two to three years. This will allow a better determination of needs and an easier adjustment of the available resources.

   c. **Reporting.** Reporting helps establish the appropriate structures to manage the administration of the courts and monitor the number of cases. Information must be reported in a manner that will allow for the transparency of the judicial budget.

   d. **Control.** Through the use of performance indicators and a periodic review of goals and objectives established for the budget, the correctives of the budgetary system will be established.
4. The chief justices of the supreme courts and tribunals of justice of Ibero-America determine the need to establish a methodology for the analysis of the judicial budgets, taking into account the corresponding constitutional framework, the proportion of the national budget as percentage of the gross domestic product, the proportion of the judicial budget as percentage of the national budget, the budgetary allowance per court in relation to the number of case intakes, and details of the judicial budget.

5. This budgetary autonomy must also be guaranteed in case of eventual general budgetary cuts, always assuring the continuity and the effective administration of justice.

6. Because it is impossible to limit the budget debate its execution must be regulated so that potential dependence on organizations of plural composition and the judiciary's independence will not be weakened.

**Judge selection and judicial stability mechanisms**

1. We ratify the need to carry out a study of judge selection and judicial stability mechanisms, updating the information received in the follow-up technical unit.

2. The responsibility related to justice administration deserves rigorous surveillance mechanisms, such as the following:

a. Once the civil servant has been appointed as a justice, a follow-up process on his or her performance will be established in the manner summarized below:
   - Revision—update of the performance of duties.
   - Evaluation—of performance and quality of work.
   - Promotion—after reviewing the results of the previous two areas, a recognition of effort must be reflected by a rank promotion and financial remuneration.

b. This process will be strengthened by the activity of the judicial school of each country. It must guarantee participation in professional improvement courses for all civil servants and to the rest of the personnel of the justice administration system.

3. Judicial training programs that incorporate ethics must be performed through special organizations and schools for judges.

4. We agree that the following are the guidelines to create an educational center for the Ibero-American judicial civil servant:

   a. To assist in the education of Ibero-American judges by examining the knowledge acquisition tools of other countries and preparing judges for handling large amounts of information.

   b. The center will focus on obtaining information for processing, obtaining conclusions, and distributing through different means (publications, seminars, courses, Internet).

   c. The center will also develop updating programs and, after gaining recognition as a formal education center, will give specialization and postgraduate courses.

   d. The center will be responsible for maintaining relationships with other institutions, such as courts and tribunals from other countries, so as to trade information, provide technical assistance for the preparation and investigation of projects outlined at an academic level (seminars and conferences), and coordinate training programs for justice sector personnel.

   e. The center will also oversee management training for judges to achieve the best possible decisionmaking.

**The fight against corruption**

**Ethics of the Ibero-American judicial civil servant**

1. Based on the principles of confidentiality, loyalty, decorum, order, diligence, wisdom, independence, equality, morality, efficiency, procedural economy, promptness, democratic awareness, fairness, publicity, respect, and deference toward the users and vigilance in ensuring the safekeeping of documents, the Chief Justices of Supreme Courts and Tribunals of Ibero-America do forthwith make the following statement of ethical principles.
2. Each court or superior court will take the necessary steps to have the universities incorporate the subject of ethics in the law schools' programs of study.

3. The scourge of corruption has a social dimension that transcends personal behavior. Consequently, a corresponding judicial decision should be based on society's general interest.

Code of ethics of the Ibero-American judicial civil servant

Canon 1 Judicial civil servants will be guided, in and outside the courts, by the search for justice and equity and the desire to reach these goals.

Canon 2 Judicial civil servants will always act within the democratic rule of law, which they will promote and defend.

Canon 3 Judicial civil servants will at all times preserve their judicial independence and dignity.

Canon 4 Judicial civil servants will defend the independence of the judicial branch from any act whose purpose is to do violence to the judicial branch or discredit it.

Canon 5 Judicial civil servants will safeguard at all times the majesty and decorum that their offices and the judicial branch should maintain.

Canon 6 When complying with the obligations of their positions, judicial civil servants will not fear public or private criticism of their acts.

Canon 7 Judicial civil servants must remain impartial with regard to conflicting parties.

Canon 8 Judicial civil servants will neither allow themselves nor other civil servants to be influenced by interests other than those of the justice administration system.

Canon 9 Judicial civil servants will not use their respective offices for their own private interests or those of other parties.

Canon 10 Judicial civil servants will receive, hear, and attend to the parties in conflict in an equitable manner, maintaining precedence of transactions.

Canon 11 Judicial civil servants, with their conduct, will preserve the transparency of judicial activities to promote public confidence in the system of justice, except in those cases in which the law establishes confidentiality.

Canon 12 Judicial civil servants will maintain at all times an honorable, prudent, patient, respectful, courteous, and dignified behavior, in and out of their offices and judicial activities.

Canon 13 Judicial civil servants will be careful of the quality of their acts and of the results of their transactions.

Canon 14 Judicial civil servants will commit themselves with the development of the law and disciplines of knowledge necessary for the judicial activity.

Canon 15 Judicial civil servants will watch over their technical training and will keep informed of the developments in judicial knowledge.

Canon 16 Judicial civil servants will be diligent with the activities they are charged with and will promote efficiency in their offices to avoid procrastination, delays, and unnecessary public service costs.

Canon 17 Judicial civil servants will ensure prompt and proper attention to the public in their offices and will offer the information requested.

Canon 18 Judicial civil servants will follow the standards of efficiency that might have been appropriately established for the performance of their obligations.

Canon 19 Judicial civil servants will commit themselves to the institutional modernization and strengthening of their offices and the justice system.

Validity, promotion, protection, and respect for human rights

Exchange of jurisprudence

1. The sentences that the national courts and tribunals will cover are provided in the instru-
ments for the protection of human rights and in the jurisprudence of the Inter-American Court of Human Rights.

2. The exchange of national and Inter-American jurisprudence on human rights will be facilitated.

3. The effective application of the rules of due process, included in the American Convention of Human Rights, will be promoted, especially with regard to:
   - Respect of procedural periods.
   - Strict observance of norms regarding detention or deprivation of freedom.
   - Timely handling of judicial recourses.
   - Strengthening of public defense.

4. National and regional jurisprudence on human rights, organized in a database, will be accessible to interested social sectors through electronic means such as Web sites.

5. The courts and supreme courts express their will to take part in the discussions currently underway about the reform process of the Inter-American system of protection of human rights.

6. The courts and supreme courts must assume an active role, using each country's means for overriding national laws that go against international commitments acquired by the states in human rights matters.

7. The adoption of constitutional reforms, in which the supremacy of international treaties on human rights is recognized, must be promoted.

8. The issues of impunity, lack of procedural swiftness, and selectivity in the treatment of cases on violations of human rights, although they have been partially overcome, continue to affect the credibility of justice and should be given priority attention by the courts and supreme courts.

**Cooperation mechanisms between the judicial branch and nongovernmental organizations**


2. Until another mechanism is created, periodic reports will be supplied to the follow-up technical unit with developments achieved in formal and de facto relations between the judicial authorities and nongovernmental organizations, in matters related to the validity, promotion, protection, and respect of human rights.

3. The specialized offices or units of the judicial branch in charge of relations with civic organizations—academic, religious, trade, and nongovernmental—will focus on cooperative measures with organizations in areas such as promotion and training of legal personnel on human rights, coordination of efforts to promote judicial reform processes, and the diffusion of jurisprudence on these subjects.

4. Links will be established among the specialized offices or units of the judicial branch dedicated to relations with civic organizations, and the nongovernmental regional networks that exist in the field of human rights and judicial reform.

**Drug trafficking and its sequel**

1. The development of a general instrument to combat drug trafficking and to standardize national procedural systems of different countries will be encouraged. Courts and supreme courts are committed to discussing an agreement project, which will permit its definite approval in the middle term.

2. Study and formulate proposals for the creation of an Ibero-American court that will hear drug trafficking offenses.

3. Establish an Ibero-American network of courts and supreme courts that will permit the exchange of concrete information on a global scale and the diffusion of documentary contents of comparative legislation on drug trafficking.

4. The development of a set of instructions to protect judges who hear drug trafficking cases is proposed.

5. Given the supranational nature of drug trafficking and other related criminal activities, the courts and supreme courts agree to the drafting of a comparative study of experiences, legal bases, and procedures applied in extradition-related matters.
6. Begin a detailed study of the mechanisms and criteria to confront cross-border activities of drug trafficking and, in particular, of the cybernetic crimes that have facilitated the legitimization of capitals and the international flow of electronic funds derived from drug trafficking.

7. Create awareness in the judicial civil servant so that when solving cases related to drug trafficking and money laundering, he or she will give precedence to the protection of collective interests.

**Conclusion**

The courts and supreme courts of justice of Ibero-America participating in this summit recommend considering the inclusion of the follow-up technical unit in the Organization of Supreme Courts of the Americas to give continuity to the work developed and to organize the Third Ibero-American Summit of Courts and Supreme Courts of Justice.
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