CONCURRENT PROGRAMS: DEVELOPMENTS IN RULE OF LAW MODERNIZATION IN LATIN AMERICA AND THE (SPANISH SPEAKING) CARIBBEAN (PI)

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The main question of this panel is about the current state of rule of law and legal system modernization in two sub regions of the Americas, considered undeveloped, or not sufficiently developed: the Caribbean and Latin America. This 4 language speaking sub-region has a very rich and diverse legal tradition, and is integrated by countries different in size, economic development, culture, primary needs and institutional design.

The Justice Studies Center of the Americas (JSCA), an autonomous, intergovernmental organization whose mission is to support the countries of the region in their judicial reform processes, was created by the OAS in 1999 to strengthen the ongoing reforms that Latin American and Caribbean judicial systems have been experimenting the last 20 years. But what led to its creation?

I. A simplified introduction. Why rule of law strengthening projects happened in the Americas?

In the mid 80’s, Latin American countries begun the transformation of their judicial systems\(^1\). The scholars working on this topic recognize two motivations and a main actor from outside the sub region for the ROL in Latin American countries to be possible now: the actor, perhaps the most important then and now for its leadership in the field, is the USAID. The motivations, both economic and political: “USAID’s shift in the mid-1980s toward trade, investment, and indigenous private sector development brought attention to the enabling environment for private sector growth, and the Agency quickly recognized that the legal, regulatory, and institutional frameworks operating in target countries represented major barriers to foreign and domestic investment. At the same time, growing bipartisan support for democracy-building programs was reflected in a surge of new justice strengthening activities, primarily directed at reducing human rights abuses in Latin America. This program emphasis resulted from congressional interest and was in part a by-product of the national security threat then posed by communist or pro-communist regimes. The first such major justice sector program was established in El Salvador in 1984, with similar programs quickly following in the rest of Central America and much of South America.”

A few years later, almost at the beginning of the 90’s, the Latin American judicial and legal reform movement gained more impulse, since these reforms were found as a condition for economic development by the institutions that formed the so called

\(^1\) From “Achievements in Building and maintaining Rule of law, MSI’s Studies in LAC, E&E, AFR, and ANE, November 2002, OCCASIONAL PAPERS SERIES, p. 8.
“Washington Consensus”. So, in short, the achievement of the full enforcement of the rule of law put the more political concerns at the margin of the programs (and of the funding), yielding to reforms that were supposed to help economic development through the improvement of certain legal and judicial conditions. Economic development was understood as the ability of countries to attract international investors and foreign corporations, as well as to offer a stable environment to conduct business both in local and international markets.

Despite the actual controversy that among scholars and international cooperation agencies both sets of assumptions or conclusions are arising3, truth is that the last two decades various millions of dollars were invested in Latin American and Caribbean Countries in order to transform their legal, but specially judicial systems4.

Recognizing the differences between the countries both in resources and history, among the main reason for this was the role that the non-democratic governments (and the judiciaries that supported and enforced their legislation and decisions) have played in the

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2. "The phrase “Washington Consensus” is today a very popular and often pilloried term in debates about trade and development. (…)Williamson originally coined the phrase in 1990 “to refer to the lowest common denominator of policy advice being addressed by the Washington-based institutions to Latin American countries as of 1989.” These policies were: fiscal discipline, a redirection of public expenditure priorities toward fields offering both high economic returns and the potential to improve income distribution, such as primary health care, primary education, and infrastructure, tax reform (to lower marginal rates and broaden the tax base), interest rate liberalization, a competitive exchange rate, trade liberalization, liberalization of inflows of foreign direct investment, privatization, deregulation (to abolish barriers to entry and exit), secure property rights. (…)Some of today’s policy discussion, however, might still be understood by using the term as a reference point. For instance, Dani Rodrik argues that there now exists an “Augmented” Washington Consensus, which in addition to the items listed above, adds Corporate governance, anti-corruption, flexible labor markets, WTO agreements, financial codes and standards, “prudent” capital-account opening, non-intermediate exchange rate regimes, independent central banks/inflation targeting, social safety nets, targeted poverty reduction. “ From http://www.cid.harvard.edu/cidtrade/issues/washington.html

3. “Ten years ago, one might accurately have said the difficulty was a "one-size" fits-all approach to the role of law in development pursued by agencies like the IMF and the World Bank as part of a "Washington Consensus." During this period, an economic policy of unrestrained "market shock," free trade and capital mobility was linked to "rule of law" injection initiatives which were all too often focused simply on formalization, privatization and the extension of then favored statutory ready-mades. This is no longer accurate. Mainstream alternatives to the old Washington Consensus have emerged. One need only consult the World Bank's website for a lengthy annotated bibliography of examples. (...)The idea that building "the rule of law" might itself be a development strategy --- typical of the Washington Consensus in its heyday and still characteristic of much contemporary development thinking --- encourages the hope that choosing law could substitute for the perplexing political and economic choices which have been at the center of development policy making for half a century”. From http://www.law.harvard.edu/programs/elrc/events/2002-2003/critiques.php

4. "In the 1990s, there was a massive surge in development assistance for law reform projects in developing and transition countries. These projects involve investments of many billions of dollars. The World Bank alone reports it has supported 330 “rule of law” projects and spent $2.9 billion dollars on this sector since 1990.” From “The rule of law in development assistance, past, present and future”, by David M. Trubek, June, 2003, http://www.law.harvard.edu/programs/elrc/events/2002-2003/papers/dtrubek.doc
major violations of human rights in the region during the 70’s and early 80’s. But it was not only a matter of Human Rights: the globalization of the commerce required that some changes were made in order to facilitate regional (and global) economic integration. And in this specific region the possibility to establish solid commercial relations with the United States of America became sometimes a matter of survival for certain national economies (for example, central American ones), which has played a major role in the whole judicial reform process. The need to lower transactional costs for conducting both national and international business, of stabilizing and developing local financial markets, and the need to secure the rights among all the parties and institutions involved in trade and finance, led to this comprehensive conclusion: rule of law, meaning trustworthy judiciaries, a stable set of basic rules and proceedings, and certainty –among other things–, had to be established throughout the region.

In order to do so, international financial institutions and cooperation agencies started to allocate resources for judicial modernization, judicial reform, legal reform, corruption-fighting programs, transparency and accountability programs, just to mention the main investment topics made to achieve the mentioned goal. This policy took the form both of credits and grants offered to the American and Caribbean countries to undertake the required changes.

In the beginning, those policies and changes, although conceived in a regional fashion, were applied in a country to country basis, and a more broad regional perspective for granting or lending the money was avoided. Although some changes and acknowledgement for the need of conceiving and executing these programs not only from a regional perspective but also in a regional manner has happened, most of the resources keep being allocated in country-based programs, and the regional approach rests on the interest, knowledge and possibilities of the recipients, being scarcely encouraged by the lenders or grant makers. Also in the beginning there was the discussion about were to start: was the first thing to do to reform the commercial law, the criminal law, or to enforce Human Rights? Court system modernization was sufficient, or the procedures and the general legal tradition of the so called civil law had to be transformed? Was it

5 “In deliberations in late 1983, the U.S. National Bipartisan Commission on Central America, headed by former Secretary of State Henry Kissinger, considered the state of the region’s judiciaries. The commission’s January 1984 report recommended that the United States encourage democratic institutions, including “strong judicial systems to enhance the capacity to redress grievances concerning personal security, property rights and free speech.” Federal legislation enacted later that year provided for assistance to El Salvador to modernize its laws, improve investigative capacities, and protect participants in criminal proceedings. In 1985, the U.S. Congress enacted legislation authorizing justice programs throughout the LAC region.”, from “Achievements in Building and maintaining Rule of law, MSI’s Studies in LAC, E&E, AFR, and ANE, November 2002, OCCASIONAL PAPERS SERIES, p. 12

6 “This regional program operated only in countries where elected civilian governments had expressed some real commitment to reform. (…)The USAID regional program was soon complemented by individual country-level programs throughout the LAC region. The 1980s were a time of program experimentation, sorting out priorities and strategies, identifying potential partners, and building USAID’s own capacities. By the early 1990s, the rule of law had been established as an important element of most USAID country strategies in the region”. Cit, p. 12-13. As for IADB and World bank’s programs, they rest mainly as country by country projects.
better for business-makers to settle their disputes in courts, or to avoid them and to establish their own alternative system for dispute settlement? 7

This discussion had to face a more basic problem, since in the region the relevant data for helping make these decisions was almost inexistent or not trustworthy. Therefore this debate about where to put the money first (and also where to put the money, without the “first”), had to be held based more upon assumptions and convincement than in data-based input. Because of this situation, local knowledge became more and more important, and the judicial and legal reform projects required increasing numbers of local consultants, specially judges and lawyers, if not local consultant firms for managing the projects. Also both formal and informal lobby skills became very valuable among the local governments and other local actors (also non-governmental), since this was a very powerful tool to get projects being funded in a context where hard data was scarce. Because of this, ensuring multi sector participation before making a decision on a project became almost –if not- mandatory for the funding agencies.

The non governmental sector became also more and more involved as a required counterpart in this judicial and legal reform projects because of the deficient (and sometimes corruption involving) project administration the government agencies made in various countries, which motivated in various cases even formal complaints of the final recipients or beneficiaries of the projects. This led to the launching of another set of projects for strengthening the civil society and its institutions as a governmental counterpart for this kind of development projects, and therefore the strengthening of civil society became also part of the strengthening of the rule of law main endeavor.

A significant part of the investment that had to be made was in infrastructure projects, since court infrastructure was poor, inadequate and deficient both in quantity and quality. The resources for these kinds of projects came mostly from external sources, such as foreign and multilateral banks, and the majority of them took the form of loans8.

7 The documents being quoted in this paper also express the different positions among agencies regarding these topics. Those agencies more concerned about Democracy itself begun supporting criminal law reform projects, and those more concerned about economic development and more directly linked to the so called Washington Consensus worried more about (and therefore funded) infrastructure investment projects and judicial management reform projects.

8 As an example, see: “In 1992, the Bank approved the first freestanding judicial reform project: the Venezuela judicial Infrastructure Project concentrated on infrastructure, technology, and some substantive studies in other areas, such as justices of the peace. During project implementation, however, the project was substantially revised to include support for the Judicial Council, judicial training, and workshops that promoted judges’ involvement in the reform process. The Bank’s early experience in Venezuela showed that greater stakeholder participation should be elicted during project design. The Bank’s approach to legal and judicial reform has evolved significantly to incorporate judicial sector assessments and diagnoses, which are used to design appropriate project components. In 1994, the first judicial sector assessment was completed in Ecuador. The assessment examined different aspects of the administration of justice, including court and case administration; selection, promotion, and disciplining of judges; training of judges, lawyers, and law students; access to justice and its gender dimension; and alternative dispute resolution mechanisms. Similarly, other development partners completed several studies that guided the choice of components included in the Bank-financed Judicial Reform Project in Bolivia.
Another significant part of the investment was made to improve the quantity and quality of the judges and other court officials, since it was also scarce and poor compared both to international standards and internal access to justice requirements. This implied not only the increase of the quantity of such court officials, both also the increase of their salaries, and some investment made on training and legal education. The changes made to the procedures (specially to the criminal procedure) led to the creation and subsequently need of implementation of new institutions (for example, the public Prosecution had to be established since it did not exist in many countries prior to these reforms as a required institution in the criminal procedure, and so was the public defense office, among others), with its impact on judicial budget increase. Large amounts of money had to be invested in building this institutions and getting them started from the very beginning.

But as the main legal changes and biggest investments were made, both the amount of the investments and the political will decreased. At the same time, the judicial and legal reform projects made in some of the countries led to similar processes in the rest of the countries of the region. Therefore, this became a regional process instead of a national one, where the countries that first started with such processes were set as an example to others that later on started developing very similar projects. But although some countries had begun to have local experience both in successful projects and failed ones, the resources and the knowledge kept being mainly managed in a country by country way, and no formal effort was made to see and manage the process and the required resources in a regional fashion, despite the assumptions made in the beginning of this introduction.

As the increase of the national budgets allocated for judicial and legal reform reached its roof - for now, and as the political instability of the region started endangering the judicial and legal reform and its achieved results along with some country’s credit - Judicial sector assessments are now regarded as highly desirable prerequisites to ensure that projects meet the needs of the country and achieve intended objectives.” From “Initiatives in legal and Judicial reform”, 2002 Edition, The legal Vice presidency, World bank, p. 5 “The Bank has various financing instruments for legal and judicial reform efforts, including adjustment, investment, learning and innovation, and adaptable program loans and institutional development grants. (…) After being introduced as a lending instrument, structural and sector adjustment loans were the Bank’s most common instrument to induce changes in legislation and reforms in the administration of justice in borrowing countries. The “conditionality” of these loans often includes preparing and adopting certain laws and regulations that reflect policies agreed upon with the Bank. (…) For typical legal and judicial reform measures that are to be implemented over two to five years, investment loans, especially for institution-building and technical assistance, are the main financial instruments.” Same, p. 7.

9 The increase in the salaries of court officials and judges comes mainly from internal sources –judicial system’s national budgets-, since the donors only exceptionally grant or lend money for this.

10 Despite important problems that still exist in the region’s judiciarries, truth is that major accomplishments have been made, and that there is an inter-american community that keeps the political and economic debate and decisionmaking going: “A comparison of today’s justice systems in the LAC region with those described in the early justice sector assessments of 10 to 15 years ago shows that much has changed. Judges and prosecutors are demonstrating greater independence and are more willing to challenge wrongdoing by the powerful. Disadvantaged groups have gained greater access to legal remedies and legal assistance. Within judicial systems, numbers of personnel have increased. Both judges and staff are better qualified, and more are selected pursuant to merit systems and receive specialized training. Procedures are more fair, transparent and efficient. Budgets are larger, productivity is higher, and backlogs are smaller. Corruption and impunity are no
taking capacities, regional management of both the past experiences knowledge and lessons and the future of the rule of law projects became not only required, but more cost efficient.

Therefore, the Countries of the OAS agreed to create a special intergovernmental organization to specially be dedicated to this judicial and legal reform effort that now all the countries in the region, in different scales, are still starting or continuing. And then the Justice studies Center of the Americas was born.

II. What have we been doing?

Since its creation, JSCA has been working towards three key goals, defined by its Board of Directors as a priority for the region. Those are:

1. To generate and improve the available information on justice issues and the justice sector in the Americas, in order to improve the quality of the decision-making processes and the debate both at national and international level regarding the judicial and legal reform in the Americas.

2. To strengthen regional cooperation and exchange between key actors among the justice sector, in order to take advantage of the regional scale economies and the experience gained in some of the countries that started implementing this kind of projects, and as a way to strengthen the process to avoid the consequences of sudden political will shifts.

3. To conduct in-depth research about the region's justice systems and its workings, and to promote innovation based upon this research, specially in the field of judicial reform, its necessity, progress and consequences.

In order to comply with the objective of this conference, following I will present the projects and results undertaken and achieved by JSCA since its creation which are relevant for this panel. More information about what JSCA has been doing since its creation almost five years ago is available both in English and Spanish at www.cejamericas.org

1. Which are the products JSCA has to offer for lawyers and other professionals in the US that are interested in the development of rule of law and legal systems in the Americas? 11

longer considered acceptable or inevitable, civil society is increasingly concerned with justice reform efforts and demands, and public awareness overall has increased. USAID has played an important role in focusing attention on these issues, in supporting successful reforms, and in promoting respect for the rule of law”. From “Achievements in Building and maintaining Rule of law, MSI’s Studies in LAC, E&E, AFR, and ANE, November 2002, OCCASIONAL PAPERS SERIES, p. 3

11 The following information is an outline of the JSCA’s annual and quarterly reports and presentations, and also of the information contained in its web site as presentation of its projects and products. All this information can be found more extensively in www.cejamericas.org. When referring to signed articles or papers, the proper quotation will be made.
a) Cover your basics

i) Know the basic data

*Report on Judicial Systems in the Americas*

This report was produced by JSCA during 2002 and 2003, and offers access through the website to basic data about the judicial systems workings of the OAS member countries. The report is divided into two sections. The first, entitled “Subjective Indicators,” provides information on public perception and risk assessment of justice systems in the Americas derived from surveys and studies. It also includes reference information, such as a list of contacts and relevant Internet links.

The second section consists of 34 individual country reports, each of which features an up-to-date description of the justice system, including a detailed outline of its institutional framework, the main types of procedures, performance indicators and general statistics.

ii) Know the system

The mentioned report also contains descriptions about the basic legal instruments, principal procedures and basic judicial institutions of the OAS member countries, along with the basic statistics regarding the system’s main operations. Those are sorted by country.

iii) Know the sources of information

The mentioned Report also contains references to the official websites of the country’s judicial institutions, legal indexes, and judicial decisions available databases. It also provides bibliographic references and web site addresses of the non governmental and international cooperation agencies working in each country.

Besides the report, users can also consult the virtual library available through JSCA’s website as well. This library permits access to full text documents on a variety of topics discussed in the judicial and legal reform arena.

iv) Be up to date!

*Nexus Newsletter*

JSCA publishes a monthly electronic newsletter in English and Spanish with a summary of the most recent major justice-related news, an events calendar, a short report on issues of regional interest, links to related web sites, reviews of recent publications, and other pertinent information.

The newsletter is distributed to a network of subscribers throughout the Americas and other regions. Users may subscribe through the web site. A summary of the newsletter is also released in French and Portuguese.

*JSCA Website,* www.cejamericas.org
JSCA’s Website is one of the institution’s key tools for complying with its mission, as it serves as an instrument for exchange, communication and organization. This regularly-updated site provides access to JSCA activities, databases and files (statistics, documents, relevant jurisprudence, basic national and regional legislation, basic information on the region’s judicial branches and other members of the sector, etc.), as well as a virtual library and additional resources that will be incorporated as time goes on. Users may promote their activities; learn about activities organized by other institutions; report on and share their experiences, work, and resources; and contact those who are developing similar programs. The Website is available in Spanish and English.

**Conferences and other events**

Also through the website you can check information about the future, past and ongoing conferences, seminars, courses and other training sessions being held by JSCA, its members, and the most important institutions working in the field. Through it users are able to access the conference’s website, and even are able to sign for taking part in the events, check the dates, the program and speakers, among other key information regarding such conferences.

**b) What has been going on and what is going on now?**

i) Know the projects and its results

JSCA is working in providing information on several topics of current importance in the judicial reform field. Some information regarding current and past judicial and legal reform projects is available through the Judicial Systems report, and the Judicial Systems Journal Dossier. But JSCA also develops special projects jointly with other organizations to gather, organize and disseminate thematic information through its website. Currently, there is available information on the following:

**Alternative Dispute Resolution Directory**

JSCA maintains a region-wide directory of centers that offer services related to Alternative Dispute Resolution (ADRs). The directory contains information on legislation, coverage, functioning and availability of Centers that offer ADR services. Also displays information related to projects carried or being carried out in this area, and bibliographic references, as well as some key and latest documents on this area.

**Inter American Database for Jurisprudence on Children’s Rights**

The Inter American Database for Jurisprudence on Children’s Rights is a project carried out by JSCA, UNICEF and Diego Portales University of Chile. The purpose of the tool is to support specialized training of judges, attorneys and prosecutors from throughout Latin American and the Caribbean in this area of law. Information about judicial decisions from Argentina, Brazil, Chile, the United States and Uruguay is available in the database, designed to organize and systematize the data gathered so that it can be easily consulted. The sources of the information are official ones. Users must register to access the database. [www.jurisprudenciainfancia.udp.cl](http://www.jurisprudenciainfancia.udp.cl)
c) Who has been doing what?

i) Know the firms, the brokers and the funders

As mentioned, the first part of the report on Judicial Systems of the Americas contains information about past projects executed by governmental agencies and through multi or by lateral cooperation, providing also information about the kinds of projects those agencies and its local and international offices sponsor or fund. Besides this, JSCA takes part in major projects being carried out by those agencies and local governments, playing different roles.

Through the networks, described below, users can also find information about projects been or being carried out in this field.

Currently JSCA is looking for funding to undertake a project in order to be able to provide more specific information regarding bids, contracts and licitations carried out by international cooperation agencies, consultant firms, and governments on judicial reform issues.

ii) Know the consultants

In JSCA’s web site, [www.cejameicas.org](http://www.cejameicas.org), you can enter a newly released Consultants database. This tool provides up-to-date information on experts working in a wide variety of disciplines and areas related to justice systems in the region. This tool has been created in order to provide the different parties participating in judicial and legal reform projects with contact and curricular information about available consultants mainly from Latin American and Caribbean countries. The users of this database can both access their personal information and keep it up to date. The ones in search of consultants can do so by area of expertise, previous experience, consultant firm membership, name or keyword. Available in English and Spanish.

All users of JSCA's website have access to this information. Contact between consultants and prospective employers is carried out directly by the interested party, and is not done through JSCA.

2) What has been JSCA doing besides putting together and disseminating this information?

a) The projects and its results.

JSCA promotes and carries out research activities aimed at enriching the judicial focus with which topics related to judicial reform have traditionally been approached by incorporating public policy instruments. JSCA engages in multidisciplinary studies that address a wide variety of related issues in order to promote the development of judicial reform in the Americas. Information about current and past projects, its results, tools, impact and funders can be found at a special section in JSCA’s website. Among the most important ones, we can mention the following:

*Follow-up on criminal Procedure reforms.*
Over the past two decades almost every country in Latin America has undertaken the task of reforming the criminal justice system. The basis for these changes has been fairly homogenous. In general, the reforms have looked to overcome a variety of problems that have been linked to the use of archaic systems based on the inquisitive model, inherited from the Spanish Colonial period. The strategy for change has involved replacing the current systems with more modern institutions that generally follow the accusatory system model. This project objectives were to contribute to the strengthening of criminal justice reform processes, with special attention being paid to the issue of implementation; to obtain and produce specific information on the functioning of reformed criminal justice systems; to determine the degree to which the changes that were anticipated have occurred and the areas in which this has not occurred because of problems experienced during the implementation process; and to contribute to the enrichment of legal culture in each country in order to reinforce the quality of criminal justice systems. It has been carried out in Argentina, Bolivia, Costa Rica, Chile, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Paraguay and Venezuela.

Access to information on the judicial systems

In spite of the fact that important progress has been made in the field of protecting human rights through the protection mechanisms provided by the Inter American system, there are serious problems with citizens' access to information on judicial administration in most OAS member states. Given that information and its publication are key for transparency in the functioning of any public institution, JSCA and the Special Rapporteur’s Office are particularly interested in carrying out this project in order to evaluate the current situation of institutions that are charged with judicial administration in Argentina, Chile, and Peru.

Generating Indicators and Judicial Statistics

Improving the quality of information on justice systems is a constant concern for nations in the Americas, and is therefore one of JSCA's primary objectives. JSCA has been developing a project related to this area since 2001. The goal is to offer useful instruments for generating an integrated data gathering and processing system in order to produce high-quality, easily understood, and comparable judicial statistics and indicators.

Currently Supreme Courts of the Americas have decided to join this project, starting in Central America and Mexico. The workings are being carried out jointly between JSCA and the Supreme Courts of those countries. Once this first stage is advanced, more countries are going to join in order to achieve the ambitious goal of having information systems reliable and comparable throughout the region. Funding has been provided by the IADB for the kickoff, but most of it is being provided directly by the judiciaries of each country.

b) The community and its permanent debate.

Sistemas Judiciales Journal

The Justice Studies Center of the Americas (JSCA), in collaboration with the Institute of
Comparative Studies in Criminal and Social Sciences (INECIP) publishes the semi-annual journal “Sistemas Judiciales” in order to provide information on the status and operations of the systems of administration of justice in the Americas. The journal presents a broad perspective of the issues based on the analysis and description of all aspects of the judicial phenomena.

The journal encourages discussion and the exchange of experiences in each of the countries of our continent with the aim of constructing judicial systems that are more democratic and more respectful of the rights and freedoms of the people. At the same time, it is also provides an on-going channel of communication for academic exchange.

Each issue of the Sistemas Judiciales addresses a central subject of special interest to the sector and includes a dossier that describes the way the different countries of the region addresses the subject. The journal also contains interviews and debates, general articles on justice in the Americas, bibliographic summaries, news, a calendar of events, and other pertinent documents.

The articles are published in the language in which they were written (Spanish, English, Portuguese, or French), with outlines in English and Spanish. Subscriptions are available through the journal’s Website: http://www.judicialsystems.org/

Some of the central issues addressed include:

- Is there a Crisis in Judicial Training?
- Alternative Dispute Resolution
- Follow-up Studies on Judicial Reform in Latin America
- Judicial Independence and Responsibility

**Sponsored Networks**

One of the missions of the Justice Studies Center of the Americas is to facilitate and promote communication between public institutions and civil society organizations in the area of justice reform, with the aim of facilitating the generation of an active regional community interested in the issues of justice, with strong working relationships among them. Networking is an essential element of achieving that goal. We are therefore actively participating and collaborating in the region’s existing networks gathering both public and private sector institutions relevant in our field of work. Those are:

- The Ibero-American Supreme Court Presidents’ Summits
- The Ibero-American Association of Public Prosecutors
- the Ibero-American Network of Judicial Schools
- the Network of the Justice Civil Society Organizations of the Americas
• the Latin American Network on Alternative Criminal policy (RLAPC)

• the Global Legal Information Network (GLIN)

• the Inter American network of legal Aid and Public Defender offices

**Virtual Forums and training**

The permanent debate is held through our publications such as the mentioned Judicial Systems Journal, but also takes more lively forms through virtual discussion forums, chat sessions, and conferences JSCA organizes for specialized and non specialized public. These on-site conferences take place throughout the year in each sub region of the Americas, covering a great amount of countries. Participation is always facilitated and encouraged through cheap fees and grants.

JSCA also receives interns and research fellows, both junior and senior, from all around the world. It is connected with major Universities in Europe and the United States for receiving researchers and scholars, and also participates in summer internship programs.

3) How is JSCA funded?

As an intergovernmental institution, JSCA is supposed to be funded by its member countries voluntary contributions. Until now, we have received such contributions from our host country, Chile, from the US through USAID, from Brazil, Canada and from Mexico, and we are negotiating with the rest of the member countries to obtain funding for specific projects and the center’s ordinary activities support.

Besides this source of funding, JSCA receives donations from 3rd parties interested in the promotion of Latin American and Caribbean judicial and legal reform and ROL strengthening projects. The GTZ, Germany’s international cooperation agency, the Ford Foundation, the Inter American Development Bank and the William and Flora Hewlett Foundation have sponsored JSCA’s specific projects as well.

USAID has been and still is a large funder of JSCA’s activities through subsequent grants since the center’s creation. These grants begun being the only source of support for JSCA, and now they represent less than the half of its activities. In the future, due to the increase of the contributions from other countries and agencies, we expect to have more diverse funding sources.

Also JSCA takes part in bidding processes offered by international agencies and countries. We must say though that we only take part in very specific kinds of biddings, since our attempt is not to compete with consultant firms in this field, but to contribute with innovation in certain fields through taking part in the mentioned bids.

For specific activities, such as conferences and training programs, JSCA receives the collaboration of NGOs, Universities, the World Bank Institute, the Canadian Agency for international development, and governmental institutions.
During the past decade the Inter-American Institute of Human Rights has carried out a number of programs related to the administration of justice. The Institute became involved in this sector because of its conviction that it is where human rights and fundamental freedoms are defined in contemporary societies and where it is possible to ascertain whether the fundamental freedoms and guarantees set out in the different instruments of domestic and international law are truly applied within our communities. Our legal structure of values and norms is valid only when concrete claims of violations of those norms are effectively resolved by the courts, using previously established procedures.

If the persons directly involved in the administration of justice are not properly prepared to exercise this function of protecting the basic rights of the individual but rather are no more than lackeys of the State, the obvious result will be that all of the positive international law on human rights, the pertinent legislation and the efforts of civil society for their proper application will be condemned to failure.

In today’s world, the administration of justice must be viewed in a context marked by both internal and external social conflicts. On the one hand and increasingly troubling, there exists the universal problem of citizen security, characterized by elevated indices of conventional and non-conventional delinquency, and, on the other hand, there are the conflicts arising from relations among States, businesses and entities and the conflicts resulting from private matters among the citizenry.

The increase in conventional delinquency has a direct influence on criminal justice. Citizen insecurity leads to calls for prompt and effective solutions, which in turn tend to bring about measures that curtail rights, supposedly restricted to malefactors but with an unavoidable extension to the public in general. These measures are often taken in contravention of domestic laws, which are then rather easily amended, and international treaties, which are not so easily derogated or changed. Delinquency on the local level may be attacked by true access to the great majority of the public to all of the services of the States, including the judicial system. On the other hand, the problems caused by non-conventional delinquency (white-collar crimes, drug trafficking and the like) can only be resolved by the adoption of international mechanisms, both preventive and repressive, given their regional and social impact.

12 Staff Members of the Inter-American Institute of Human Rights
The antiquated institutions and laws that predominate in the countries of Latin America make more difficult resolving these problems and finding workable answers that would lead to true social and economic development. The obvious solution is the modernization of both institutions and legislation as well as the elimination of the defects of the system itself, with its serious traits of inefficiency, corruption and favoritism and, in some cases, impunity.

A prominent cause of the inefficiency in the administration of justice is a chronic budgetary deficit, particularly the lack of financing of the Judicial Branch. In the long run, the problem is political since the judiciary is dependent on the Executive and Legislative Branches for its funding. This circumstance seriously compromises the external independence of the courts. It also has a direct impact on the possibility of adequate salaries of those who work in the system, opening the door to corruption.

Even though the Constitutions of a majority of the countries of the region establish a fixed proportion of the national budget for the Judicial Branch, few countries comply, which creates a two-fold disrespect for the Constitutional norms: ignoring the Constitutional mandate and lessening the capacity of the judiciary to do justice, resulting in violations of the international human rights obligations of the State.

Economic limitations also result in the infrastructure and capacity of the system not meeting the general needs of the public – incomplete geographical coverage; inadequacy of existing courts; lack of transportation, laboratories and equipment – and insufficient technical and human resources – limited number of specialized professionals; lack of official mechanisms to improve access to justice, such as public defenders; absence of scientific methods for the collection and examination of evidence.

The region maintains in great part a system of the formal implementation of antiquated legislation, coupled with a timid and incipient development of modern laws. Certain areas of vital importance in guaranteeing and protecting human rights, such as the rights of the family, labor and administrative rights, are without specialized laws or need modifications in line with current times. This problem of out-of-date laws is obviously much more dramatic in fields such as public international, commercial, immigration and other laws that have a direct relation to economic and social globalization.

Judicial procedures in Latin America generally continue to be predominantly written, formal, cumbersome and lengthy and are in practice obstacles to access to justice, economic dynamism and social progress. Added to this is the serious problem of the excessive length of trials and the undue delay in responding to matters submitted to the judiciary.

The public faces of the administration of justice are the judges. A prerequisite for the public to have confidence in the system is that there be confidence in those who administer it. In the measure that the Executive and Legislative Branches do not establish procedures that are altogether clear, transparent and subject to control for the naming of high court judges and, in many cases, for the designation of judges in general,
the judiciary will not be independent. Improvised appointments, family ties and party loyalties, low salaries, lack of professional incentives, low social esteem for the role of the judiciary, among others, are factors that undermine confidence in the judiciary. A promising recent development is the decision of President Kirchner of Argentina to circulate the names of candidates to fill vacancies in the Supreme Court to the different organizations of civil society and civil society at large for their comments before presenting the candidates’ names to the Senate for confirmation.

The administration of justice can be affected by other forms of corruption – payment of illegal commissions, arms trafficking, personal favoritism with public funds, influence trafficking, illicit enrichment of staff- and the corruptive elements involved in private criminality –contraband, tax evasion, fraud. The police and the judiciary have not been able to respond nor have they been able to successfully investigate and punish, in the majority of cases, these sophisticated private and public forms of delinquency and corruption.

These reflections bring us to the topic of impunity, which is the natural result of the aforementioned factors, rather than a problem of the judicial structure itself. The roots of this phenomenon are in the inability to pursue and punish conventional and non-conventional crimes, as well as in the lack of mechanisms and resources for the effective access to the services of the State, including the area of justice, on the part of socially vulnerable majorities –women, children, indigenous people, migrants- and in the intervention itself of the State and private bodies charged with providing security and order, which are often converted into active agents of the abuse of power and the violation of individual rights and freedoms.

There is a desperate need to improve the level of the administration of justice in order to guarantee individuals the freedoms that will enable them to achieve the full range of their possibilities. Therefore, those involved in the administration of justice must fully assume the role assigned to them in a democratic State, the duty of which is to guarantee respect for basic freedoms and to raise the level of access to justice for vulnerable sectors of the population and for those who have the greatest legal and extralegal difficulties in defending their interests.

The countries of the region and the international cooperation are certainly aware and are concerned with the aforementioned problems. Efforts were made in the 1970’s to identify and modernize antiquated laws but the economic crisis that affected the region during the following decade forced postponement of the putting into practice of the ideas put forth. This delay has, however, permitted a better scientific basis for the changes.

During the 1990’s these ideas were again taken up by the international cooperation and specific activities were undertaken in the region. For example, there was a generalized change from a formal and written procedure in criminal trials to one that is informal and oral and, in Bolivia, a jury system was established. The Bolivian experiment was not altogether successful as it went against national realities and its implantation has been difficult to apply because of the basic lack of knowledge and experience of the members
of the juries. It is important, nonetheless, to recognize that the objective of this initiative is to involve and give greater participation to civil society, which had been completely alien to what happened in the courtroom.

The transition to oral procedures has been received with more enthusiasm, especially by those who perceive it as a solution to the problems of judicial delay. The change from written to oral procedure might, however, result in the collapse the criminal system, if not remedied soon. The tonic is training for the judges, prosecutors and defense attorneys in the new system. If those actors in a trial are not confident in the courtroom, the accused and the public will not be confident that justice is being done.

Another change underway in several countries has been the elimination of the role of the investigating judge, which means that the Office of the Prosecutor is not only more involved in the trials but is also converted into sort of prejudge because, generally speaking, it is the prosecutor who now brings cases before the court, which will decide whether there was a violation of the criminal law. The judgment of the court can only be appealed to the Court of Cassation. In the French tradition, appeal to a Court of Cassation is limited to examining matters of law, which means that it is not the most apt body to ensure the protection of rights that might have been violated during the trial. This was the issue presented to the Inter-American Court of Human Rights recently (Herrera Ulloa vs. Costa Rica, judgment of July 2, 2004) where the Court decided against a country traditionally respectful of the norms and practice of human rights because it lacked an appeal procedure that would guarantee due protection of human rights since cases were resolved only at one judicial level with no true appeal, contrary to the judicial guarantees set out in Article 8.1 of the American Convention on Human Rights.

This is a case where a reform has lead to a violation of the American Convention and, therefore, there must be a review of reforms taken elsewhere and a rethinking of the future. What is more, the judgment of the Inter-American Court has the indirect effect that the sentences handed down under the reform must be reviewed by the appropriate courts, which presents serious structural, legal and financial problems. Structural, because the States must create—or reinvent—the appropriate courts to carry out this review; legal, because the courts must review the legal scope of the sentences already handed down as a final verdict; and financial, for the cost that these measures imply for the States and their inhabitants.

This circumstance, in addition to demonstrating the scope and effect of an international court committed to the protection of human rights, exemplifies the need that human rights modernization must be accomplished taking into account the complexity of all aspects. Failure to do so may seriously compromise the good results and great expectation of the reform.

Faced with public reaction to the apparent increase in street crime and the sensation that the criminal justice system is to a great degree at fault, two general tendencies have evolved. The first, which may be classified as repressive, is to seek a solution through Constitutional and legal changes that would strengthen the military and police forces,
increase the length of sentences and limit procedural guarantees and fundamental freedoms in general. Another facet of this tendency is to brand certain judges, especially those who are diligent in ensuring the legal rights of defendants, as being “soft on crime” and calling for their removal from the bench.

This is clearly not in accord with the concept of a democratic state of law but rather is a return to the doctrine of national security in the sense that the guarantees and rights must be subordinated to a supposed superior interest of order, discipline and control. One would have thought that this doctrine had been completely discredited by the tragic events in Latin America during the 1980’s -events that have come to light in macabre detail through the valiant work of the different national commissions of truth and reconciliation.

A second tendency can be said to be the result of the so-called democratic consolidation that has taken place in Latin America during the past two decades with the aim of confronting the effects of violence and social conflict and is centered on promoting the modernization and the democratization of the institutions involved in the systems of justice, mainly through legislation.

To accomplish this, governments have appointed national commissions, representing diverse sectors, to organize and coordinate the reform process. The projects of modernization of the judiciary in Latin America since the beginning of the 1990’s have focused on the following aspects:

- Infrastructure: construction of courts with the idea of centralizing services in one building and decentralization in the sense of a greater geographical distribution.
- Informatic technology: replacement of typewriters with computers, which permits a more efficient management of and greater access to information on cases before the different courts.
- Management of the courts: separation of the administrative and judicial functions, thus permitting the judges to devote more time to the judging of cases.
- Planning: training in budgetary and other matters.
- Alternative resolution of conflicts: reduction of court congestion through the more informal means of mediation and conciliation.

Perhaps the final step in the system of the administration of justice is that concerning the jails and penitentiaries. There are countries in Latin America where more than half of the prison population is awaiting trial, which reflects not only a failed system but also the concurrent violation of human rights that this imprisonment implies. Only now are some countries looking into alternative possibilities for serving time, elimination of prison for civil debts, reduction of preventive detention, etc. In almost every country visited by the Inter-American Commission on Human Rights as part of its on-site investigations, the Commission has pointed out the deplorable conditions, especially with respect to overcrowding, of the jails.

The experience of the Inter-American Institute of Human Rights
The Inter-American Institute of Human Rights is an autonomous international institution, created in 1980 under an international agreement with the mandate to educate in human rights and promote the observance of those rights and democracy throughout the Americas. Its Statute defines it as an academic institution, which means that it does not denounce nor investigate alleged violations of human rights or voice its opinion on the status of any State’s compliance with human rights norms. The Institute is considered the academic arm of the inter-American system for the protection of human rights.

In line with its mandate on education, over the last decade the IIHR has trained those involved in the administration of justice, holding more than five annual activities at the national level. To date, it has worked in all of Central America and Panama as well as in Argentina, Bolivia, Mexico, Paraguay and Venezuela. Since 1994, the Institute has carried out some 70 activities of this type.

The Institute has also sponsored or participated in ten international meetings, both regional and global, the most recent being the “World Summit of Attorneys General,” held in Guatemala; the “First Regional Meeting of Presidents of Supreme Courts and Attorneys General of Latin America and the Caribbean and their European Counterparts,” held in Costa Rica and the “Seventh Ibero-American Summit of Presidents of Supreme Courts,” held in El Salvador.

As part of its work in this field, the Institute has given technical assistance in the drafting of laws and legal reforms, both substantive and procedural, in Guatemala and Nicaragua and has disseminated information on jurisprudence in human rights through its periodical “Iudicium et Vita,” which includes domestic judgments that make reference to compliance with the norms of the international protection of human rights.

The Institute has also worked to strengthen the organic and functional structures of the judiciary and other bodies of the administration of justice, including the Constitutional and lower courts, to which it has given special emphasis because that is where most human rights cases are resolved. It has also worked with public defenders and prosecutors.

Special attention should be given to its recent work in Nicaragua, Guatemala, Paraguay and Honduras. In the former two, in addition to training activities, the Institute has been involved in the modernization of laws that have brought the institutions of the administration of justice up-to-date. In Nicaragua, it carried out a project that resulted in the adoption in 1996 of a new “Organic Law of the Judiciary,” which replaced a body of laws enacted at the end of the 19th century. The new legislation incorporated new institutions with the purpose of improving access to justice by, for example, creating the Office of the Public Defender, reforming internal procedures and defining the specific powers of the different Chambers of the Supreme Court.

In Honduras, technical assistance was provided in establishing the Constitutional Court, which had been created by law in 2000. It worked with the Supreme Court in drafting the
Rules of the Constitutional Court, which permitted the Court to operate while a law was being adopted that would duly regulate constitutional protection. This new law, in addition to modernizing the guarantees of constitutional protection, gathered in one document all previous norms, which had been dispersed in various parts and had been amended so many times that nobody had a clear idea of the true dimension of that protection.

The project in Guatemala involved compiling and systematizing the jurisprudence of the Constitutional Court so as to give a greater judicial security by making all of the precedents easily available. This was accompanied by training sessions throughout the country that presented up-to-date information on international human rights and the domestic precedents, which will permit a greater access to justice by giving those involved better tools. Prior to this activity, precedence was not taken into account in judging cases because nobody had a clear idea of what had been decided.

Of special interest is the work in Paraguay, which built upon that done in Guatemala. The goal was to train more than one-half of the judges of all levels of the country. To do so, the Institute carried out 30 activities in seven different cities. The academic part of the project was also broadened to include, in addition to the international law of human rights, such matters as constitutional protection, judicial ethics, abuse of authority and relations with the mass media. At the same time, a special course was given to a select group of judicial staff on educational strategies and methodologies in human rights. In the end, almost three-quarters of the judges of the country were trained.

Perspectives for the future

The renewed interest of the international agencies of cooperation in the modernization of the administration of justice is a welcome sign. The countries of Latin America that have adopted democracy during the past two decades as their form of government should prove a fertile ground for innovative ideas to improve the administration of justice in their respective nations, thus providing their inhabitants with the protections set out in international human rights treaties, such as the American Convention on Human Rights.

There remains a need to train those involved in the administration of justice in areas such as the hierarchy of the norms of international human rights law, its direct application on the domestic level and of their responsibility as representatives of the State on the judicial level. Given the inertia of the countries of the region to incorporate these matters into their laws and in the judgments of their courts, this is an urgent and continuing task.