

January 28, 2002

**TO: Ms. Kim Delaney, USAID/Peru**

**FROM: Keith Henderson, Rebecca Reichert , James Michel and Alvaro Herrero**

**SUBJECT: Trip Report – Judicial Independence Conference and Follow-On Idea Paper**

## **Introduction**

IFES is very pleased to submit this trip report and concept paper to USAID/Peru. We very much appreciate the opportunity to work with USAID on this important event, and hope it is just the beginning of a long and fruitful relationship.

The cosponsors, in addition to IFES, were the Washington-based Due Process of Law Foundation (DPLF), the Santiago-based Judicial Studies Center of the Americas (CEJA), and two Peruvian organizations – the Institute for Legal Defense (IDL) and the Association of Judges for Justice and Democracy. The USAID/Global Democracy and Governance Office were also very involved in the planning phase of this event, which was hosted by USAID/Peru.

As agreed upon by all of the organizers and sponsors, the event was intended to and served multiple purposes. Among other things, it imparted a wealth of rich, new comparative information, as well as lessons learned, through a serious, well-organized discussion of judicial independence issues of concern to Peruvian and Latin American reformers alike. Key research findings and lessons learned were gleaned from both the Guide for Promoting Judicial Independence and Impartiality, in special reports related specifically to Peru and through thoughtful discussions and papers presented by country, regional and international experts. The conference also served to highlight the importance of judicial reform to the Peruvian public, which was accomplished through solid press coverage and recent IDL and CEJA publications. In this regard, we believe the conference also demonstrated the capacity of the recently established CEJA to assemble an impressive group of regional experts for an informed discussion of key issues of importance to judicial systems throughout the region and the capacity of a important indigenous Peruvian NGO, IDL, to undertake serious research and debate among many Peruvian players, particularly those in civil society. The country and regional network of reformers created and the knowledge imparted during the conference and how it is ultimately used are other accomplishments that may not be fully realized until later in the reform process.

Most important, the conference it provided an opportunity for Peruvian government officials, judges, other legal sector practitioners and civil society, alongside international experts, to openly meet and debate how to literally rebuild a judiciary that had been seriously compromised by the “reforms” of the Fujimori government. While the conference was largely successful on most fronts, its immediate impact may not be fully realized, however, because of an unforeseen internal dispute that resulted in more limited official participation than planned, especially by judges currently sitting on the Peruvian Supreme Court (most of whom were appointed by Fujimori and generally not perceived to be reform oriented). However, the primary goal that all agreed was most important, that is, securing the attendance of all major NGO’s working in this field and supporting reforms, as well as a number of key reform oriented judges, was indeed largely accomplished. Some of the ideas presented at the conclusion of this paper are designed to build upon the conference and to reach-out to those judges who are genuinely interested in a serious, strategic discussion on this important subject.

### **Initial Consultations**

We arrived late at night on Tuesday, November 27. We spent the following day in a series of consultations organized by IDL Executive Director, David Lovatón, who accompanied us throughout the day. These consultations included meetings in the morning with the President of the Superior Court of Lima, the World Bank and USAID and, in the afternoon, a roundtable at IDL with participation by judges, university professors and IDL staff. (Because of scheduling constraints, a meeting with the Inter-American Development Bank was postponed until the following day.) A list of persons consulted is at Tab A. That evening, we had an informal dinner meeting, organized by CEJA, with the conference co-sponsors and the invited regional experts.

### **The Conference**

The following two days, Thursday and Friday, were dedicated to the conference. The program (Tab B) was well designed to present the new USAID/IFES Guide and address the issues of judicial independence in a sequence that moved from a global to a regional to a national context. The list of invited participants (Tab C) reveals a thoughtful mix of international and regional experts and representatives from key Peruvian organizations with interests in the administration of justice. However, the number of Peruvian participants was less than planned even though targeted invitees were encouraged to attend through reminder telephone calls. Nonetheless, a very respectable number of invitees attended including an official representative of the President of the Peruvian Supreme Court.

Following introductory remarks by US Ambassador John Hamilton, IFES made the opening presentation (Tab D). This speech and IFES’s remarks placed the Guide in the framework of contemporary thinking on development cooperation and international law, described the methodology of the IFES-led research effort that produced the Guide, and offered observations on how national reformers and their international partners could make best use of this new instrument.

This was followed by a discussion of regional experience with issues of judicial independence, led by Margaret Popkin (DPLF) and Juan Enrique Vargas (CEJA), two of the foremost experts on Latin American judicial reform issues. Their presentations and the subsequent discussion were facilitated by the distribution of Spanish tests of Part I of the Guide and its Latin American annex that Ms. Popkin had authored. Charts illustrating IFES analysis of survey data were also made available to conference participants (Tab E).

The Thursday afternoon session of the conference moved the dialogue to the national scene. It was dedicated to the situation of the Peruvian judiciary. First, Ernesto de la Jara and David Lovatón (both of IDL) led a discussion of the implications of the current democratic transition for the advancement of judicial independence. In a second panel, two judges, Sergio Salas and Antonia Saquicuray, focused on the role of judges and of the National Judicial Council in promoting judicial independence and on the need for democratic processes that will enable the judiciary to regain legitimacy within Peruvian society.

The second day of the conference began with four simultaneous workshops, each led by a distinguished Latin American expert in the field and focused on a particular aspect of judicial independence. The themes and discussion leaders for the workshops were as follows:

- Systems for the selection and promotion of judges, led by Ricardo Gil Laavedra, former Minister of Justice of Argentina;
- Disciplinary control and evaluation of judicial performance, led by Daniel Gonzalez, Magistrate of the Supreme Court of Costa Rica;
- Judicial organization structures, management and budget, led by Carlos Peña Gonzalez, Dean of the Law School at the Chilean University Diego Portales; and
- Publicity and judicial transparency, led by Alberto Binder, Executive Director of the Argentine-based Institute of Comparative Studies in Penal and Social Sciences (INECIP).

Each workshop presented its conclusions and the discussion leaders then joined with representatives of the sponsoring organizations to summarize those conclusions in a “Declaration of Lima” (Tab F). At a closing ceremony, the declaration was released to the press and the sponsoring organizations responded to questions from the media. Álvaro represented IFES at the head table for this final event.

Local press coverage of the conference was both broad and positive (Tab G). In addition, IDL is devoting the next issue of its widely disseminated periodical to this conference.

### **Conclusions and Recommendations**

On the whole, the conference provided a timely contribution to the dialogue in Peru about a vital aspect of rebuilding a democratic system of governance. Based upon feedback received from

various conference participants, positive features included the high quality of the Guide, the solid content of the presentations and discussions, and serious engagement on a diversity of perspectives – including those of experts from other Latin American countries and those of Peruvians from outside of Lima. Many participants noted that the logistical arrangements were excellent and that the agenda was strategic and covered in a timely and efficient manner. As noted earlier, press coverage obtained was seen as very favorable by any regional or global standard (on an issue like judicial reform).

As mentioned earlier, all of the foreign experts and many of the Peruvian invitees attended as planned, although some were not able to remain for the second day. The principal disappointment, as noted at the outset of this report, was that an unrelated institutional conflict in Lima at the time of the conference resulted in diminished participation from the Peruvian judiciary. Specifically, Judge Salas, a conference speaker, had publicly criticized the weak leadership of the Supreme Court. The Supreme Court responded by reprimanding him for his statement. IDL then publicly condemned the reprimand as interference with the Judge's freedom of speech. This prompted the Court to notify Peruvian judges that their attendance at the conference would not be regarded as a day spent on official duty and they would not be paid for any day spent at the conference. As a result, some invited judges did not attend at all, and others attended the first day but missed the workshops on the second day.

This unforeseen coincidence in the timing of a controversy in local judicial circles may have diminished the impact of the conference, at least in the short-term. Most directly, fewer high-level Peruvian judges were exposed to the materials and dialogue than planned. This was a contributing factor to having fewer Peruvian participants on both the first and second days. Thus, the declaration resulting from the conference was not developed by as wide of an array of Peruvians either.

However, we believe there are a number of steps that can be taken to reinforce the achievements of the Lima Conference with those who attended, to capitalize on new and upcoming appointments to the Courts, to extend knowledge of the issues addressed there to a broader audience, and to build upon and further raise the public profile of judicial independence issues -- which are integral to USAID/Peru's current strategic efforts to strengthen the rule of law as a pillar of a democratic society. Toward these ends, the following activities are recommended for your consideration:

1. Encourage a broad distribution of the forthcoming IDL publication of the conference proceedings to all who were invited (Peruvian and non-Peruvian), as well as to key Peruvian political and judicial leaders. Early discussions with IDL and USAID/Peru should be held to discuss the need for printing additional copies and their distribution.
2. Distribute the imminent Spanish translation of the entire USAID/IFES Judicial Independence Guide to the same individuals who receive the IDL publication of the November conference proceedings. This should be discussed promptly with USAID/Washington and USAID/Peru and coordinated with IDL.

3. Organize a follow-on workshop for targeted Peruvian judges in order to engage an essential constituency that was not adequately represented at the November conference. The subsequent naming of additional Supreme Court Magistrates to fill a number of existing vacancies offers an opportunity to involve new leadership in the Peruvian judiciary. While chiefly directed at judges, some degree of participation from a limited number of civil society and other government officials might be desirable, although not the primary focus. However, the total number of participants should be small, consistent with a participatory workshop rather than a passive audience. Also, a change of venue might be helpful to avoid reviving old arguments. For example, the High Level Working Group on Modernization of the System for the Administration of Justice (GTAN) might be the convening organization.

The discussion at such a workshop should address the national situation, with a focus on specific issues under active consideration in Peru. If the Peruvian judiciary requests, special reports or recommendations could be developed to address targeted issues such as those listed below:

- Criteria and procedures for selecting judges so as to strengthen the judicial career and diminish the extent of provisional appointments;
- Criteria and procedures for performance evaluation and ratification of tenure for judges so as to foster judicial security and improve performance;
- Training requirements for judges, with consideration of both content and timing;
- Capacity for planning and budgeting for the judiciary so as to improve the timely availability of necessary resources;
- Mechanisms for control and discipline within the judiciary so as to assure the system's integrity;
- Promoting transparency of procedures and increasing public confidence;
- Innovative tools and approaches designed to inform and enhance public participation in the reform process.

Discussion might be initiated through a brief presentation by someone from the GTAN on a particular issue (including proposed actions), followed by a comment from a senior judge and a general discussion. This approach could help to familiarize new senior judges with current deliberations and also provide valuable input from the judges in the ongoing dialogue. IFES could play a valuable role as a resource, drawing on the Guide as a source of broad international experience. The objective would be to foster a shared understanding of issues, to share lessons learned across borders, to articulate a range of Peruvian and international views, and to actively engage senior judges in the reform process.

If there were interest in some of these ideas, IFES would work closely with the Mission, perhaps during an upcoming visit, to refine the agenda and develop a concrete action plan and budget (within the amount already available).

Attachments:

- A. List of persons consulted.
- B. Conference program.
- C. List of invited conference participants.
- D. Michel presentation.
- E. IFES charts.
- F. Declaration of Lima.
- G. Press coverage.

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