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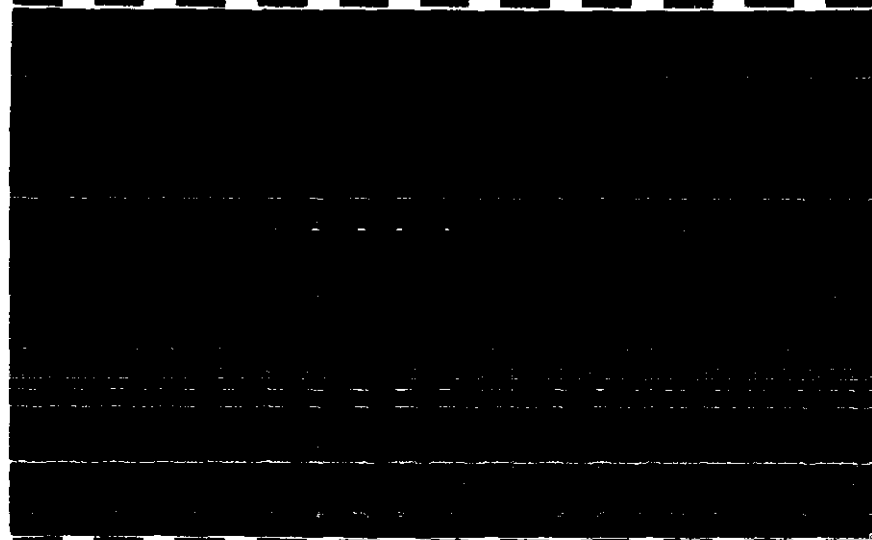
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MAKING DEMOCRACY WORK



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**JUDICIAL INDEPENDENCE
CONFERENCE
LIMA, PERU
NOVEMBER 29-30, 2001**

IFES FINAL ACTIVITY REPORT

**USAID COOPERATIVE AGREEMENT
No. AEP-A-00-99-00017-00**

**Submitted to the
United States Agency for International Development
By the
International Foundation for Election Systems**

**INTERNATIONAL
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MAKING DEMOCRACY WORK

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

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 texts 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 Herrero 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.
4. 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.

cc: Henry Schiffman, USAID/W
Richard Soudriette
Juliana Pilon
Patricio Gajardo
Fernando Mark Rondon

Notes

LIST OF PERSONS CONSULTED

Institute for Legal Defense (IDL) Roundtable:

Ernesto de la Jara Basombrio, Director, IDL.
David Lovatón, Executive Director, IDL.
Abraham Siles Vallejos, Professor, Catholic University.
Antonia Saquicuaray, President, Association of Judges for Justice and Democracy.
Jimena Cayo, Anti-corruption Judge.
Carlos Rivera, IDL staff.
Other IDL and academic participants.

Inter-American Development Bank:

Gonzalo Deustua, Sectoral Specialist.

Superior Court of Lima:

Sergio Salas Villalobos, President of the Court.

USAID:

Kimberley Delaney, Team Leader, Democracy Programs.
Violeta Bermudez.
Maria Antonieta Delgado.

World Bank:

David Varela S., Legal Counselor for Latin America and the Caribbean.

Notes

INVITADOS A LA CONFERENCIA DE LIMA SOBRE INDEPENDENCIA JUDICIAL

De la ciudad de Lima

1. Dr. Sergio Salas (Presidente de la Corte Superior de Justicia de Lima)
2. Dr. Oscar Alfaro (Presidente de la Corte Suprema de la República)
3. Dr. Jorge Angulo Ibérico (Presidente del Consejo Nacional de la Magistratura)
4. Dr. Roger Rodríguez (Director de la Academia de la Magistratura)
5. Dra. Elcira Vásquez (Presidenta de la Academia de la Magistratura)
6. Dra. Nelly Calderón (Fiscal de la Nación)
7. Sr. Fernando Olivera (Ministro de Justicia)
8. Dr. Pedro Cateriano (Viceministro de Justicia)
9. Dr. Raúl Callirgos (Director Nacional de Justicia)
10. Dr. Manuel Aguirre Roca (Presidente del Tribunal Constitucional)
11. Congresista Daniel Estrada (Presidente de la Comisión de Justicia del Congreso)
12. Dr. Diego García Sayán (Ministro de Relaciones Exteriores y ex-Ministro de Justicia)
13. Dr. Juan Jiménez (Asesor del Ministerio de Relaciones Exteriores en temas de democracia y ex-viceministro de justicia)
14. Dr. Manuel Sánchez Palacios (Presidente del Jurado Nacional de Elecciones)
15. Dra. Ana Teresa Revilla (Secretaria Técnica del Grupo de Alto Nivel del Sistema de Administración de Justicia)
16. Sr. Gabriel Ortiz de Zevallos (Coordinador del equipo de apoyo a la Secretaría Técnica del Grupo de Alto Nivel del Sistema de Administración de Justicia y presidente del Instituto Apoyo)
17. Dr. Franz Kundmuller (Miembro del Grupo Consultivo del Grupo de Alto Nivel del Sistema de Administración de Justicia)
18. Dr. Jorge Santistevan (Miembro del Grupo Consultivo del Grupo de Alto Nivel del Sistema de Administración de Justicia y ex-Defensor del Pueblo)
19. Dr. Daniel Figallo (Representante del Tribunal Constitucional en la coordinación del Grupo de Alto Nivel del Sistema de Administración de Justicia)
20. Dr. Vicente Zegarra (Representante del Consejo Nacional de la Magistratura en la coordinación del Grupo de Alto Nivel del Sistema de Administración de Justicia)
21. Dra. Antonia Saquicuray (Presidenta de la Asociación de Jueces por la Justicia y la Democracia)
22. Dr. Máximo Lagos (Presidente de la Sala de Derecho Público de la Corte Superior de Lima)
23. Dra. Elizabeth Mac Rae (Vocal de la Sala de Derecho Público de la Corte Superior de Lima)
24. Dra. Janet Tello (Vocal de la Sala de Derecho Público de la Corte Superior de Lima)
25. Dra. Magaly Bascónes (Jueza anticorrupción de la Corte Superior de Lima)
26. Dra. Jimena Cayo (Jueza anticorrupción de la Corte Superior de Lima)
27. Dr. Víctor Cubas (Fiscal Superior de la Corte Superior de Lima)
28. Dra. Ana Cecilia Magallanes (Fiscal anticorrupción de la Corte Superior de Lima)
29. Mr. Mark Lewis (representante del DFID, Reino Unido)
30. Sr. Thomas Geiger (Director USAID/Perú)
31. Sr. Ken Yamashita (Director Adjunto USAID/Perú)
32. Sra. Kimberly Delaney (USAID, oficina Lima)
33. Sra. Madeline Williams (USAID, oficina Lima)
34. Srta. Holly Flood (USAID-OTI, oficina Lima)

35. Dra. Violeta Bermúdez (USAID, oficina Lima)
36. Dra. Maria Antonieta Delgado (USAID, oficina Lima)
37. Sra. Roberta Jacobson (Embajada Americana)
38. Sr. Tony Arias (Embajada Americana)
39. Sra. Karen Rodriguez (Embajada Americana)
40. Srta. Lily Nigaglioni (Embajada Americana)
41. Sr. Deusta (Representante del BID)
42. Dr. David Varela (Representante del Banco Mundial)
43. Dr. Francisco Eguiguren (Jefe del Departamento Académico)
44. Dr. Jorge Avendaño (profesor de la Facultad de Derecho de la Pontificia Universidad Católica del Perú)
45. Dr. Gorki Gonzales (profesor de la Facultad de Derecho de la Pontificia Universidad Católica del Perú)
46. Dr. Abraham Siles (profesor de la Facultad de Derecho de la Pontificia Universidad Católica del Perú)
47. Dr. Eloy Espinoza Saldaña (profesor de la Facultad de Derecho de la Pontificia Universidad Católica del Perú)
48. Dr. Enrique Bernaldes (Presidente de la Comisión Andina de Juristas)
49. Dr. Martín Castro (Abogado Comisión Andina de Juristas)
50. Representante de la Delegación de la Comisión Europea en Lima
51. Sr. Christian Sánchez (representante del British Council)
52. Miguel Huertas Representante de la Coordinadora Nacional de Derechos Humanos
53. Walter Albán (Defensor del Pueblo en Funciones)
54. Dr. Samuel Abad (Defensor del Pueblo especializado en derecho constitucional)
55. Dra. Rocío Villanueva (Defensor del Pueblo especializada en derechos de la mujer)
56. Dr. Roberto Pereira (Defensoría del Pueblo)
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58. Dr. Carlos Montoya (ex Presidente del Consejo Nacional de la Magistratura y profesor de la Facultad de Derecho de la Pontificia Universidad Católica del Perú)
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60. Dr. César Azabache (Miembro del equipo de procuradores ad hoc para casos anticorrupción)
61. Dr. Ronald Gamarra (Procurador ad hoc para el tema de derechos humanos)
62. Dr. Javier de Belaúnde (experto en temas judiciales y profesor de la Facultad de Derecho de la Pontificia Universidad Católica del Perú)
63. Representante de la Facultad de Derecho de la Universidad Nacional Mayor de San Marcos.
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65. Dr. Pedro Cueto (Vocal de la Corte Superior de Justicia del Callao)
66. Kim Buldoc (Representante del UNDP)
67. Sr. Michel Archambault (Representante del UNDP)
68. Sr. Peter Luhman (Jefe de la Cooperación Técnica Alemana- GTZ)
69. Dr. Horst Schonbohm (Representante de la GTZ)
70. Sra. Leeann McKechnie (Jefa de la Cooperación Técnica Candiense (ACDI)
71. Sra. Orietta Rodríguez (Representante de ACDI)
72. Sra. Elena Montobbio (Coordinadora General de la Cooperación Española -AECI)
73. Sra. Rosario del Bosque (Representante de la AECI)
74. Sr. Peter Sultzer (Jefe de la Cooperación Suiza -COSUDE)
75. Sr. Richard Kohli (Representante de la Cooperación Suiza -COSUDE)

76. Sr. Ekart (Representante en el Perú de la Fundación Friedrich Ebert)
77. Sr. Philippe Serres (Representante de la Unión Europea)
78. Francisco Diez-Conseco Tavera (Consejo por la Paz)
79. Dr. Martín Belaúnde (Decano del Colegio de Abogados de Lima y Zar anticorrupción)
80. Gina Costa (Defensor Adjunto del Pueblo)
81. Salomón Lerner (Transperencia)
82. Sr. Rafael Roncagliolo (Secretario General de Transparencia)
83. Congresista Ana Townsend Diez-Conseco
84. Alberto Borea Odria
85. Dra. Lourdes Flores Nano
86. Beatriz Mejía

De otras ciudades (provincias)

87. Dr. Luis Puentes (Diakonía del Obispado de Piura)
88. Dr. Vladimir Quiroz (Defensoría Lestonnac de Chepén)
89. Dr. Eduardo Pacheco (Vocal de la Corte Superior de La Libertad)
90. Dra. Yolanda Falcón (Representante del Defensor del Pueblo en Trujillo)
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92. Dr. Roger Cabrera (Vocal de la Corte Superior de Loreto)
93. Representante del Comité de Derechos Humanos de Ica
94. Dr. Pablo Ilave (Juez de la Corte Superior de Junín)
95. Dr. César Prado (Vocal de la Corte Superior de Ayacucho)
96. Dr. José Manuel Córdova (Vocal de la Corte Superior de Ayacucho)
97. Dr. Juan Carlos Ruiz (Vicaría de Solidaridad de Sicuani, Cusco)
98. Dra. Patricia Salas (encargada de la Oficina de Justicia de Paz de la Corte Superior de Arequipa)
99. Dr. Carlos Luna (Vocal de la Corte Superior de Arequipa)
100. Dra. Miriam Escalante (Vicaría de Solidaridad de Ayaviri, Puno)
101. Dra. Ivonne Montoya (Jueza de la Corte Superior de Puno)
102. Dr. Rolando Luque (ex representante del Defensor del Pueblo en Arequipa)
103. Dr. José Chacón (Vocal de la Corte Superior de San Martín)
104. Dr. Fausto Alvarado (Presidente de la Corte Superior de Huancavelica)
105. Dr. Oscar Loayza (Presidente de la Corte Superior de Ica)
106. Dr. Silvio Campana (Representante de la Defensoría del Pueblo en la ciudad del Cusco)
107. Representante de la Facultad de Derecho de la Universidad Nacional de San Agustín de la ciudad de Arequipa
108. Representante de la Facultad de Derecho de la Universidad Católica Santa María de Arequipa
109. Representante de la Facultad de Derecho de la Universidad San Antonio Abad de la ciudad del Cusco
110. Representante de la Defensoría del Pueblo en la ciudad del Cusco
111. Dr. Jorge Salas Arenas (Vocal de la Corte Superior de Justicia de Arequipa)
67. Alberto Quintanilla (Abogado y Notario de Juliaca - Puno)
68. Victor Mendoza (Abogado de la Comisión de Justicia Social de Chimbote - Ancash)
69. Carlos Honores Iglesias (Profesor de Derecho de la Universidad Nacional de Trujillo- La Libertad)
70. Dra. Carmen Kcomt (Jueza de la Corte Superior de Justicia de Piura)

De América del Sur

1. Dr. Carlos Ponce, Consorcio Justicia, Venezuela
2. Dr. Oscar Gaitán, Corporación Excelencia en la Justicia, Colombia
3. Dr. Jaime Vintimilla, CIDES, Ecuador
4. Eduardo Rodríguez, Corte Supremo, Bolivia
5. Jorge Bogarín, Trial Court, Paraguay
6. Daniel González, Miembro de la Corte Suprema de Justicia, Costa Rica
7. Carlos Peña, Decano de la Facultad de Derecho de la Universidad Diego Portales, Chile
8. Ricardo Gil Lavedra, Ex ministro de Justicia y Presidente de la Fundación para la Reconstrucción Institucional, Argentina
9. Alberto Binder, Director Ejecutivo del INECIP, Argentina
10. Luciana Sánchez, Centro de Estudios Judiciales de las Américas
11. Juan Enrique Vargas, Centro de Estudios Judiciales de las Américas
12. Mark Magdic, Centro de Estudios Judiciales de las Américas

Participantes Internacionales

1. Embajador Jim Michel, IFES
2. Maggi Popkin, DPLF
3. Alvaro Herrero, IFES

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PROGRAMA
CONFERENCIA SOBRE LA INDEPENDENCIA JUDICIAL
LIMA, PERÚ
29-30 DE NOVIEMBRE DE 2001

Objetivos de la Conferencia

- El objetivo del primer día de la conferencia es presentar y atraer el interés de los participantes a temas estratégicos relacionados directamente con la independencia judicial en el Perú dentro de un contexto global, regional y nacional. La discusión incluirá investigaciones nacionales e internacionales, prácticas ejemplares, tendencias emergentes y lecciones aprendidas. Los temas discutidos durante el primer día serán enlazados con las tareas recomendadas para cada grupo de los talleres del segundo día.
- El objetivo de los Grupos de Trabajo en el segundo día es poder aprobar una Declaración de Lima recomendando las prioridades dentro de los temas de la independencia judicial, el desarrollo de estrategias específicas cómo implementar reformas de corto y largo plazo y la identificación de programas específicas y prácticas ejemplares.

Primer Día
29 de noviembre de 2001

8:30 – 9:30AM
Inscripción de los participantes

9:30 – 11:00AM
Bienvenida, Introducción y Visión General de la Guía de USAID/IFES sobre
la Independencia Judicial – Perspectivas Globales y Regionales

9:30 – 9:45 AM
Bienvenida y Anuncio Inaugural de la Guía sobre Independencia Judicial por
USAID

9:30 – 9:45 AM
Embajador de los Estados Unidos en el Perú John Hamilton

9:45 – 11:00 AM
Embajador James Michel
IFES/USAID

- Resumen de la metodología utilizada en desarrollar la Guía sobre Independencia Judicial y de las respuestas al cuestionario distribuido a los participantes antes de la conferencia (el marco básico, los objetivos generales y los temas principales de la

Guía Global y su relevancia a los temas en el Perú, la investigación y las respuestas a los cuestionarios)

- Normas y obligaciones legales internacionales y regionales relacionadas con la independencia judicial (ONU, OEA, OIT, Convención Interamericana contra la Corrupción, etc.) y la importancia de la independencia judicial en los procesos de reforma.
- Investigación internacional y análisis comparativo y la relevancia regional:
 - Obstáculos globales comunes a la independencia (procesos de selección, promoción, disciplina y asignación de casos, corrupción, transparencia y responsabilidad)
 - Lecciones globales, regionales y nacionales, practicas ejemplares y ejemplos exitosos

Discusión: 10:30 – 11:00 AM

Pausa y Café: 11:00 – 11:15 AM

11:15 AM – 1:15 PM

**Temas Principales de la Independencia Judicial Identificado durante la
Investigación de USAID/IFES para la Guía sobre la Independencia Judicial:
Similitudes y Diferencias Regionales – Estudios Específicos**

Presentadores:

Juan Enrique Vargas

Director Ejecutivo, Centro de Estudios de Justicia de las Américas (CEJA)

Margaret Popkin

Director Ejecutivo

Fundación para el Debido Proceso Legal (DPLF)

- Temas del ambiente habilitante en América Latina: Fuerzas culturales, legales y políticas que facilitan y obstaculizan la independencia judicial y la responsabilidad judicial
- Marco básico para la reforma: obstáculos y retos
- Reformas constitucionales y otras medidas para reformar los métodos de selección de los magistrados de la Corte Suprema (incluyendo el rol de la sociedad civil y los medios de comunicación)
- Consejos de la Judicatura – composición, mandatos y retos
- Reformas de la Carrera Judicial: transparencia y responsabilidad (selección, promoción, evaluación, disciplina y permanencia)

Debate del Panel: 12:30PM – 1:15PM

1:15PM – 2:45PM Almuerzo

3:00PM – 5:00PM

**Temas Principales con que se enfrenta la Sociedad Peruana y el Gobierno del Perú:
Perspectiva General Histórica y Contemporánea**

Ernesto de la Jara

David Lovatón

Instituto de Defensa Legal (IDL)

- Historia breve de la reforma judicial en el Perú (éxitos, fracasos y lecciones aprendidas)
- Perspectiva general de los programas y planes de reforma judicial actual
- Revisión de temas principales de la independencia judicial:
 - Obstáculos principales a la independencia judicial
 - Temas relacionados a la autonomía institucional y la independencia de jueces en el proceso de tomar decisiones
 - Mecanismos, prácticas ejemplares y temas principales relacionados con la transparencia y la responsabilidad (gubernamental y no-gubernamental) – incluyendo los procesos de selección, promoción y disciplina, códigos de ética y monitoreo interno y externo

Debate de Panel: 4:15 – 4:45 PM

Pausa y Café: 4:45 - 5:00 PM

5:00 PM – 7:00 PM

**Temas Principales con que los Jueces y la Profesión Legal se enfrentan
Para Facilitar la Independencia Judicial en el Perú:
Retos y Oportunidades**

Sergio Salas

Presidente del Corte Superior de Lima

Antonia Saquicuray

Presidenta de la Asociación de Jueces por la Justicia y la Democracia

- El rol de y los retos relacionados con las asociaciones judicial y el desarrollo de códigos de ética judicial que se pueden hacer cumplir con la norma en el Perú
- El Consejo Nacional de la Judicatura y el Consejo Nacional de Magistrados en el Perú: Temas emergentes, retos y mandatos
- Liderazgo judicial y como crear un consenso para reforma dentro la Judicatura. Propuesta para una justicia democrática

Discusión: 6:15 PM – 7:00 PM

Anuncios: 7:00PM – 7:15PM

7:15PM – 8:00PM Cóctel

Segundo Día
30 de noviembre de 2001

Talleres de Trabajo 9AM - 1PM
Almuerzo 1:30PM - 2:30PM

Cuatro Grupos de Trabajo con cuatro expertos que facilitarán la discusión y después en conjunto se debatirá. Los temas de los talleres serán: (i) sistema de selección y promoción de los magistrados, (ii) control disciplinario y evaluación de desempeño de los jueces, (iii) organización judicial: estructura del sistema judicial, gestión y presupuesto, (iv) publicidad y transparencia de las actuaciones judiciales.

Estos cuatro temas deberán ser trabajados teniendo en cuenta los siguiente ejes:

- (i) Fortalecimiento de la independencia de las instituciones del sector justicia,
- (ii) Participación ciudadana y relaciones con la sociedad civil,
- (iii) Mejora de la transparencia en la gestión
- (iv) Mejora de la calidad de la justicia
- (v) Mejora de la eficiencia de los sistemas judiciales

3:30 PM - 6:00 PM - Discusión Plenaria: Las conclusiones elaboradas en estos grupos serán presentadas en la sesión plenaria por un miembro del grupo designado. Cada grupo de trabajo deberá presentar cinco problemas identificados y consensuados –sin embargo, en caso de disenso, los coordinadores podrán evaluar preservarlo como tal en la exposición-, y cinco propuestas estratégicas de solución a dichos problemas –ligados obviamente al tema discutido en cada taller. Luego se pasará esta información a un comité de redacción, conformado por los expertos y por los voceros designados por cada grupo, quienes estarán encargados de redactar la Declaración de Lima. Esta declaración será luego leída en el plenario.

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Remarks by James Michel

Conference on Judicial Independence Lima, Peru, 29 November 2001

Before proceeding to a discussion of the new Guide on Judicial Independence, I want to take a moment to express appreciation for the opportunity to be here with you today. I am grateful to the authors of the Guide for having produced such a valuable resource and for allowing me to help present it.¹ I am grateful to the organizers of this conference – the International Foundation for Electoral Systems, the Judicial Studies Center of the Americas, the Due Process of Law Foundation, the Peruvian Institute for Legal Defense and the Peruvian Association of Judges for Justice and Democracy – for thoughtfully preparing an event that will increase our general understanding of the basic, yet complex concept of judicial independence and also will contribute to the sound application of that concept. And I am grateful to all who have come to participate in the deliberations during the next two days. I feel that we all share a commitment to the objective of judicial independence. I believe we also share a confidence that it can be given practical effect in our societies, and a determination to support the efforts of those in Peru, as in other countries, to assure that it is a strong and enduring characteristic of the administration of justice.

In recent years, the process of development has come to be recognized as a holistic endeavor by which societies become more stable, just, secure and prosperous, with shared basic values and interests grounded in human freedom and opportunity. It is now generally agreed that this process requires simultaneous attention to many related factors – economic policies, good governance, human development, citizen participation, preservation of the natural environment, the resolution of conflict. We no longer debate whether development is an economic or a social or a political phenomenon. It is all of these.

This comprehensive view of development was evolving at a time in the history of Latin America when authoritarian forms of government had been universally discredited and when public opinion, informed by modern channels of communication, was having greater political influence with popularly elected civilian governments. In this context, the rule of law has received growing attention from reformers within the region and from the international community as a critical aspect of development. The rule of law has also attracted increased attention in national development efforts and programs of international cooperation in other regions.

In societies where citizens can rely on access to a fair and effective system of justice, the rule of law operates to enhance the security of person and property. Where the rule of law is only an aspiration and not a reality, the absence of a credible justice system corrodes social cohesion, impedes economic activity and threatens political stability. These are clearly central issues of

¹ Gail Lecce, Senior Rule of Law Advisor in the Global Democracy and Governance Office of USAID and Sandra Coliver, former Senior Rule of Law Advisor to IFES and current human rights advocate, are the two principal organizers of the Guide. Keith Henderson, current Senior Rule of Law Advisor to IFES, made important contributions to this presentation and is the analyst of the data in the comparative study.

social, economic and political development. As the guidelines of the OECD Development Assistance Committee assert:

"A predictable legal environment, with an objective, reliable and independent judiciary, is an essential factor for democratization, good governance and human rights. [...] The rule of law is also an essential factor for the effective functioning of the society and the economy."²

With increased attention to these issues has come a heightened expectation of the role of the justice system as a pillar of a democratic society. The justice system is expected to protect citizens against common delinquency and against arbitrary or corrupt governmental misconduct. The justice system is expected to provide an objective forum for resolving disputes on the basis of known and generally accepted norms, thereby facilitating peaceful commerce, fair competition and productive investment. It is the justice system to which the citizen should be able to appeal directly – without the intervention of bureaucratic or political or economic patrons – to apply the rule of law and protect that citizen's rights.

Historically, while there were significant differences among countries, most judicial systems had not been designed or operated to meet these heightened expectations. The courts had often been treated as an extension of political authority and judges were subject to political influence. Judicial budgets were meager; procedures were inefficient; training was inadequate; legal representation and access to affordable justice were not readily available to the poor. In summary, justice systems were not assuring justice.

There has always been what the US reformer Roscoe Pound in a famous 1906 speech called "popular dissatisfaction with the administration of justice." Over the past two decades the examination of the causes of that dissatisfaction has intensified. The legacy of weak and sometimes corrupt judicial administration was not acceptable for many reform-minded jurists and political leaders. Nor was it satisfactory to citizens in countries where the ascendance of elected civilian government had given rise to aspirations of more capable and trustworthy institutions of democratic governance and equal justice.

Beyond internal desires and expectations, recent years have seen increased attention to international standards that emphasize the importance of access to justice as a basic human right. For example, the 1948 Universal Declaration of Human Rights provides:

"Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal in the determination of his rights and obligations and of any criminal charge against him."³

Similarly, the 1966 International Covenant on Civil and Political Rights specifies in somewhat greater detail:

² *Participatory Development and Good Governance*, Development Guidelines Series, OECD, 1995, paras. 33-34.

³ UNGA Res. 217 A (III), Article 10, 10 December 1948.

"All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."⁴

These global standards are reflected in basic instruments of regional organizations, such as the European Convention on Human Rights and the African Charter on Human and Peoples Rights. In the case of the Inter-American System, access to justice is demanded by the 1948 American Declaration of the Rights and Duties of Man and the 1969 American Convention on Human Rights. In particular, the American Convention, known as the San Jose Pact, provides:

"Every person has the right to be heard, with due process guarantees and within a reasonable time, by a competent, independent and impartial judge or tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature."⁵

Further, the American Convention provides a right to recourse before a competent tribunal for protection against violations of fundamental rights recognized by constitution or law – or by the Convention itself.⁶ Thus, parties to the San Jose Pact are obliged not only to provide access to competent, independent and impartial judges and tribunals. They are also obliged to provide a remedy to those who are denied such access. This is an additional reason for American States to be concerned about the competence, independence and impartiality of their justice systems.

It is hardly accidental that the international legal instruments I have quoted explicitly identify independence as one of the essential attributes of a judge or tribunal. Scholars and practitioners have long analyzed and debated the qualities of a fair and efficient justice system. There is agreement among them that judges must be free from undue interference and able to base their decisions on the facts and the law. This factor of independence is a prominent theme in the considerable body of literature on the subject. This is only to be expected. How can true justice be other than independent? A judicial decision that is influenced by factors other than the relevant facts and the applicable law as objectively determined is, by its nature, unjust. A justice reform that fails to address independence in judicial decisions can have no credibility.

As countries around the world have initiated judicial reforms, we have seen judicial independence taken up by international bodies concerned with human rights and the administration of justice. In 1985 the United Nations adopted Basic Principles on the

⁴ UNGA Res. 2200 A (XXI), Article 14(1), 16 December 1966; entered into force 23 March 1976. Other provisions of the Covenant identify specific rights of those charged with criminal offenses.

⁵ American Convention on Human Rights, Article 8(1). Like the United Nations Covenant on Civil and Political Rights, the American Convention specifies in detail rights to be accorded to those accused of crimes.

⁶ *Ibid.*, Article 25.

Independence of the Judiciary.⁷ Regional bodies have done likewise, as in the case of the 1997 Beijing Principles of the Law Association for Asia and the Pacific.⁸ The promotion of judicial independence is a principal objective of the Organization of Supreme Courts of the Americas.⁹

The United Nations Commission on Human Rights established the position of Special Rapporteur on the Independence of Judges and Lawyers in 1994. The Special Rapporteur has submitted seven annual reports and numerous special country reports, including one on a visit to Peru. Regional bodies such as the Inter-American Human Rights Commission, the Latin American Institute for the Prevention of Crime and Treatment of the Offender and the Andean Commission of Jurists, as well as national organizations such as the Peruvian Institute for Legal Defense, have also done valuable work on the theme.

The official documents and scholarly commentaries reveal a strong consensus on a number of elements of judicial independence. These include:

1. There shall not be any inappropriate interference with the judicial process, nor shall judicial decisions be subject to revision, except upon appellate review or mitigation or commutation by competent authorities.
2. Judges shall perform their professional duties free from improper influences and without undue delay. They shall ensure that judicial proceedings are conducted fairly and that the rights of parties are respected.
3. Not only must judges be impartial, they must be seen by all to be impartial. Accordingly, in the exercise of their rights to freedom of expression, belief, association and assembly, judges shall conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary.
4. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction of the ordinary courts.
5. Governments are obliged to provide adequate resources to enable the judiciary to perform its functions properly.

⁷ Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of the Offender held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

⁸ Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region, adopted by the Sixth Conference of Chief Justices, held in Beijing in August 1995 and revised at the Seventh Conference of Chief Justices, held in Manila in August 1997. See also Council of Europe Recommendation R(94)12 on the Independence, Efficiency and Role of Judges; Latimer House Guidelines for the Commonwealth on Parliamentary Supremacy and Judicial Independence, adopted 19 June 1998.

⁹ See Organization of American States General Assembly Resolution on Support for the Administration of Justice in the Americas, AG/RES. 1407 (XXVI-0/96), 7 July 1996.

6. Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection or promotion shall be based on objective factors, in particular, ability, integrity and experience, and shall include safeguards against improper influences.
7. Judges shall have guaranteed tenure until retirement or the expiration of their term of office, where such exists.
8. Judges should enjoy personal immunity from civil suits for acts or omissions in the exercise of their judicial functions.
9. Judges shall be subject to suspension or removal only for reasons of incapacity or behavior that render them unfit to discharge their duties. Judges have the right to a fair and expeditious hearing concerning complaints or charges against them. All disciplinary, suspension and removal proceedings shall be determined in accordance with established standards of judicial conduct.
10. Legislation, judicial information and court decisions shall be made available to the public.

In its bilateral and regional programs of development cooperation, the United States, working principally through the US Agency for International Development, has encountered issues of judicial independence in many countries over the past two decades. A great deal of information has been compiled and many lessons have been learned in carrying out specific programs in specific countries. However, there has not been – until now – a consolidation of the collective experience in an organized study of judicial independence in a global and regional context. The absence of such a study meant that lessons learned had to be learned again and again, sometimes at considerable and unnecessary cost.

Then, in 1999, USAID entered into a collaborative relationship with the International Foundation for Election Systems (IFES) to identify the central issues in judicial independence, to examine national, regional and global experience in addressing those issues, and to produce a guide that will be of value at two levels:

- At an intellectual level, the guide should disseminate knowledge, stimulate debate and promote understanding of the concept of judicial independence and the underlying panoply of related issues.
- At a practical level, the guide should help partners in development cooperation to design and implement effective programs that will strengthen judicial independence as an integral component of international support for the efforts of societies to attain their own aspirations of stability, justice, security and prosperity.

Over the past two years, IFES has commissioned research papers and surveys from all regions of the world. USAID and IFES have worked with detailed information received from 26 countries

and with thematic studies from many international experts. They have organized an intensive discussion and participatory analysis of all these contributions, including several workshops in Washington and one in Guatemala. And they have synthesized and distilled the results into the single volume being presented for the first time here in Lima.

The questionnaire sent to country contributors was quite extensive. It invited respondents to submit replies of approximately 12-15 pages in length, setting out their views with specificity. It is important to point out that the questionnaire did not ask about the programs of USAID. It asked about the experience of the countries included in the survey and about the particular historical and cultural factors that had affected judicial independence in those countries. The 15 main questions, along with subsidiary questions, were designed to elicit information that would facilitate comparisons between countries. The main questions were grouped into four parts:

- Chief obstacles to judicial independence;
- Ways to strengthen judicial independence through reforms that address government justice sector institutions;
- Ways to strengthen judicial independence through activities outside the justice sector;
- General themes, such as sequencing, countering opposition and the impact of foreign donors.

I think it is significant that the questions addressed ways to strengthen independence both through government institutions and through activities outside the justice sector. I have heard it said that judges have only as much independence as politicians are willing to give them. I believe, however, that this analysis is too facile. The question is far more complex, reflecting continuously evolving relationships among individual judges, the institutions of the justice system, political leaders and civil society.

For example, longer tenure for judges, something that increases their independence, is more likely to be achieved if the institutions of the justice system operate in a transparent manner that generates public confidence. It is more likely to be achieved if the performance of individual judges demonstrates integrity and competence. And the prospects for longer tenure are improved if civil society perceives the risk of political interference as a danger from which judges and those affected by their decisions should be given greater protection.

The interrelationship among these issues is illustrated by the recent constitutional reform in Honduras. In the past, each new Congress elected a new Supreme Court following national elections every four years. In the coming year, Supreme Court magistrates will have a longer term, divorced from the elections calendar, and the selection process will be radically changed to a more transparent and highly participatory one that will involve all sectors of society in judicial nominations. The changed nomination process gives sufficient confidence that political influence will be moderated and diffused. Therefore, longer terms and greater independence are more acceptable. As discussed in the guide, other countries have also had experience in balancing interrelated issues of judicial independence.

The survey and the various studies that inform and give content to the new guide do an admirable job in drawing out these issues and the connections between them. And the Guide itself provides an excellent synthesis of the interrelations and tensions between and among factors such as:

- the nature and sources of demand for reform;
- the adequacy of systems for selection, tenure, evaluation, budget formulation and other institutional structures that help to confront interference;
- judicial capacity and attitudes, including training, access to research materials, administrative support and codes of ethics;
- transparency of courts operations and procedures, their openness to scrutiny by the media and the public, disclosure of the assets, income and relationships of judges; and
- increasing societal respect for the role of an impartial judiciary.

This analysis in Part I of the guide is complemented by six regional and country studies in Part II. These studies describe different experiences under distinct types of legal systems and in disparate social, economic, cultural, political and other local circumstances. In this regard, there are some notable differences between Latin American experience and that in other regions.

Part III provides more in-depth expert analysis of major themes. These include the tension between judicial independence and judicial accountability, the role of civil society, the enabling environment and context for reform, and the role of court administration. Three appendices provide convenient reference to some established international standards of judicial independence, on-line resources and notes on contributors.

This is a very thoughtful, thorough and informative document.

Subsequent sessions of this conference will address these related issues in depth. I would like to emphasize this morning just one overarching factor identified in the research for this Guide. It is the issue of transparency. This survey, like others before it, reveals considerable dissatisfaction with the performance of the courts in most countries. And that dissatisfaction includes skepticism about the integrity of judicial decision making. It is clear that transparency is important in all aspects of the judicial process – in judicial selection, in case assignment and other administrative procedures, in procedures for receiving evidence and making and publishing decisions, in the operation of judicial councils, codes of ethics, disclosure of the assets and income of judicial personnel. If transparency principles can permeate the judicial process, reformers inside and outside the system will be better able to sustain judicial independence. Moreover, the public will be able to develop trust in the judiciary and also be more effective in monitoring its performance, protecting it from abuse and advocating reform.

This new Guide on Judicial Independence will be a valuable tool for reformers around the world and for their international partners in development cooperation. However, it is important to bear in mind that it is no more than a tool. Reform is still a difficult and time consuming process, involving political culture and relations among citizens, public institutions and political leaders. Strategies for reform still need to make informed choices and convert them into timely action in a manner that increases knowledge, protects rights and gauges the society's receptivity to change and its capacity to implement it.

From my own experience in international cooperation and from my study of the experiences of respected practitioners more knowledgeable than I am, I have tried to identify some key approaches that appear to be common characteristics of many successful reform efforts. I have been pleased to find the thrust of the new Guide to be so consistently in accord with those same qualities. In the written text of my remarks I have identified the experts and the sources I have drawn upon in compiling this list of widely shared orientations for reform efforts.¹⁰ I would like to share only the list of orientations with you this morning.

¹⁰ Among the sources relied upon in the compilation of the list that follows are:

- Ellicott, Kimberly Ann, ed., *Corruption and the Global Economy*, Institute for International Economics, 1997.
- Fairbanks, Michael, "Changing the Mind of a Nation: Elements in a Process for Creating Prosperity," in Harrison, Lawrence E. and Samuel P. Huntington, ed., *Culture Matters: How Values Shape Human Progress*, Basic Books, 2000, p. 268.
- Fairbanks, Michael and Stace Lindsay, *Plowing the Sea: Nurturing the Hidden Sources of Growth in the Developing World*, Harvard Business School Press, 1997.
- Hausman, Ricardo, "Lessons from the Political Economy of Other Reforms," in Jarquin, Edmundo and Fernando Carillo, ed., *Justice Delayed: Judicial Reform in Latin America*, Inter-American Development Bank, 1998, p. 39.
- Klitgaard, Robert, *Controlling Corruption*, University of California Press, 1988; *Adjusting to Reality: Beyond "State versus Market" in Economic Development*, ICS Press, 1991.
- Olson, Mancur, *Power and Prosperity: Outgrowing Communist and Capitalist Dictatorships*, Basic Books, 2000.
- Sen, Amartya, "The Role of Legal and Judicial Reform in Development," Address to a World Bank Conference on Comprehensive Legal and Judicial Development, Washington, DC, 5 June 2000. See <http://www1.worldbank.org/legal/ljrconference.html>.
- Vargas Viancos, Juan Enrique, "Judicial Reform in the Basque Country: A Case Study," in Christina Biebesheimer and Francisco Mejia, ed., *Justice Beyond Our Borders: Judicial Reforms for Latin America and the Caribbean*, Johns Hopkins University Press, 2000.
- *Corruption and Integrity Improvement Initiatives in Developing Countries*, United Nations Development Programme and OECD Development Centre, 1998.
- *Local Perspectives: Foreign Aid to the Justice Sector*, International Council on Human Rights, 2000.

- An initial analysis of capacities, commitment and priorities should be conducted in a participatory manner, resulting in a set of concrete, long-term goals that can be described and communicated as a compelling vision. This helps to assure realistic objectives. It also builds expectations and strengthens accountability, thereby increasing commitment.
- Policy goals should be pursued with persistence, with continuing analysis of strategic choices, monitoring of progress and evaluation of efforts made. This places a premium on sustained leadership, even as the identity of individuals changes over the course of a long-term effort. Persistence means that continuity of external support is also important.
- A broad range of stakeholders should be cultivated and engaged in the process of change, beginning with the initial assessment and continuing throughout the process. In particular, reform constituencies should be identified within affected organizations to build local ownership and provide input from those who know best the existing structures and incentives. Partners should seek to build expanding networks of supportive relationships and productive coalitions of participants and civil society.
- The long-term goals should be pursued flexibly, taking advantage of opportunities that arise. Visible, short-term interim results should be sought and publicized, demonstrating progress and sustaining momentum.
- Reforms need to be institutionalized. The organizations responsible for carrying them out should be strengthened. Internal incentives should seek to change the culture of these organizations. This includes linking specific reforms to the broader mission of the organization, building morale, identifying and rewarding those who are contributing and punishing those who are obstacles to progress.

Ultimately, reform comes from within a society. It must reflect local responsibility for and commitment to integrated policies that are results-oriented over the long term. International support for locally led efforts can be effective in accelerating and increasing positive outcomes. Such support needs to be based on shared goals, an agreed division of labor, adequate resources and effective coordination. Objectives need to be set and activities designed to be compatible with the capacity and commitment of the local actors and the environment in which the work is to take place, as well as the capacity and commitment of external partners.

Within that framework, the new Guide on Judicial Independence offers much valuable assistance. It contains a great amount of useful information, access to a wide variety of experiences, and thoughtful analysis of key aspects of the vitally important issue of judicial independence. This document should help to improve both the design and the implementation of programs to enhance judicial independence as an essential component of the rule of law.

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- Final Report, Ad Hoc Working Group of the Development Assistance Committee on Participatory Development and Good Governance, OECD, 1997.

I look forward to the more in-depth discussion of these themes that will follow today and tomorrow. I believe that our deliberations will be timely for Latin America, and especially for Peru as it proceeds with its national process of judicial renovation. I feel privileged to be with you and hope that our time here together will contribute to our shared objective of an independent judiciary as a reliable instrument of democracy, development and opportunity, and as a vigilant guardian of the rights of all.

Notes

DECLARACION DE LIMA SOBRE INDEPENDENCIA JUDICIAL

El gobierno de la ley exige un sistema de justicia independiente e imparcial. El valor de la igualdad –a cuya realización aspira una sociedad democrática- encuentra en jueces independientes y provistos de condiciones objetivas de imparcialidad un camino imprescindible para su realización. Ese objetivo se ve, a veces, obstaculizado por una cultura corporativa puesta de espaldas a la ciudadanía y débil para oponerse a un sistema político que, en vez de dar independencia a los jueces, crea las condiciones para subordinarlos. En vez de esa cultura cerrada y autorreferente, la experiencia muestra que jueces vinculados a la ciudadanía y abiertos a la sociedad civil, poseen una base de legitimidad que favorece su independencia y su capacidad para controlar el poder. La independencia judicial es una aspiración y un esfuerzo de la ciudadanía que los jueces no deben dilapidar. Con miras a ese objetivo, parece necesario:

1. *Crear las condiciones para una profesión judicial con sentido de independencia, y consciente de la importancia de su función.* Contribuirán a ello un sistema de selección transparente basado en criterios objetivos que aseguren la idoneidad del juez; su lealtad irrestricta a la ley; y lo liberen de la subordinación a intereses políticos y económicos.

2. *Fortalecer las bases de la legitimidad de los jueces.* Para estos fines, es necesario, asegurar la pluralidad en el debate al interior de la judicatura; acortar las distancias culturales y comunicativas entre los miembros de la judicatura y el común de la ciudadanía, acogiendo, en especial, la diversidad social y cultural; asegurar la publicidad en la realización de los juicios; y descentralizar la administración de justicia para así hacerla más cercana a las culturas locales.

3. *Garantizar la independencia interna de los jueces.* Para alcanzarla, será necesario separar el control de contenidos de las decisiones jurisdiccionales del control disciplinario; ejercer ese control disciplinario con respeto irrestricto al debido proceso legal; efectuar la evaluación de desempeño de los jueces con bases en criterios impersonales medidos con indicadores objetivos; y no interferir con el ejercicio por parte de los jueces de sus derechos ciudadanos, en especial, los derechos de asociación y libre expresión.

4. *Asegurar la adecuada asignación de recursos al sistema de justicia.* Favorecerá el logro de este objetivo, dotar a los jueces de la capacidad necesaria para diseñar su propio presupuesto, concibiéndolo como un instrumento de gestión con sentido estratégico orientado a hacer posible al gobierno de la ley; discutir en condiciones de igualdad con los otros sectores del Estado su asignación presupuestaria; prever una ejecución presupuestaria autónoma y descentralizada; e instituir sistemas de control ex post en los que, con base en indicadores, la ciudadanía y el poder público puedan evaluar el desempeño de los jueces.

Finalmente, hacemos votos para que en el Perú, país anfitrión de este encuentro, se persista en los esfuerzos por construir un poder judicial independiente e imparcial, provisto de las condiciones necesarias para evitar injerencias económicas y políticas que lesionan el gobierno de la ley.

Instituto de Defensa Legal (IDL), Jueces por la Justicia y la Democracia, Fundación Internacional para los Sistemas Electorales (IFES), Fundación para el Debido Proceso Legal (DPLF), y Centro de Estudios de Justicia de las Américas (CEJA).

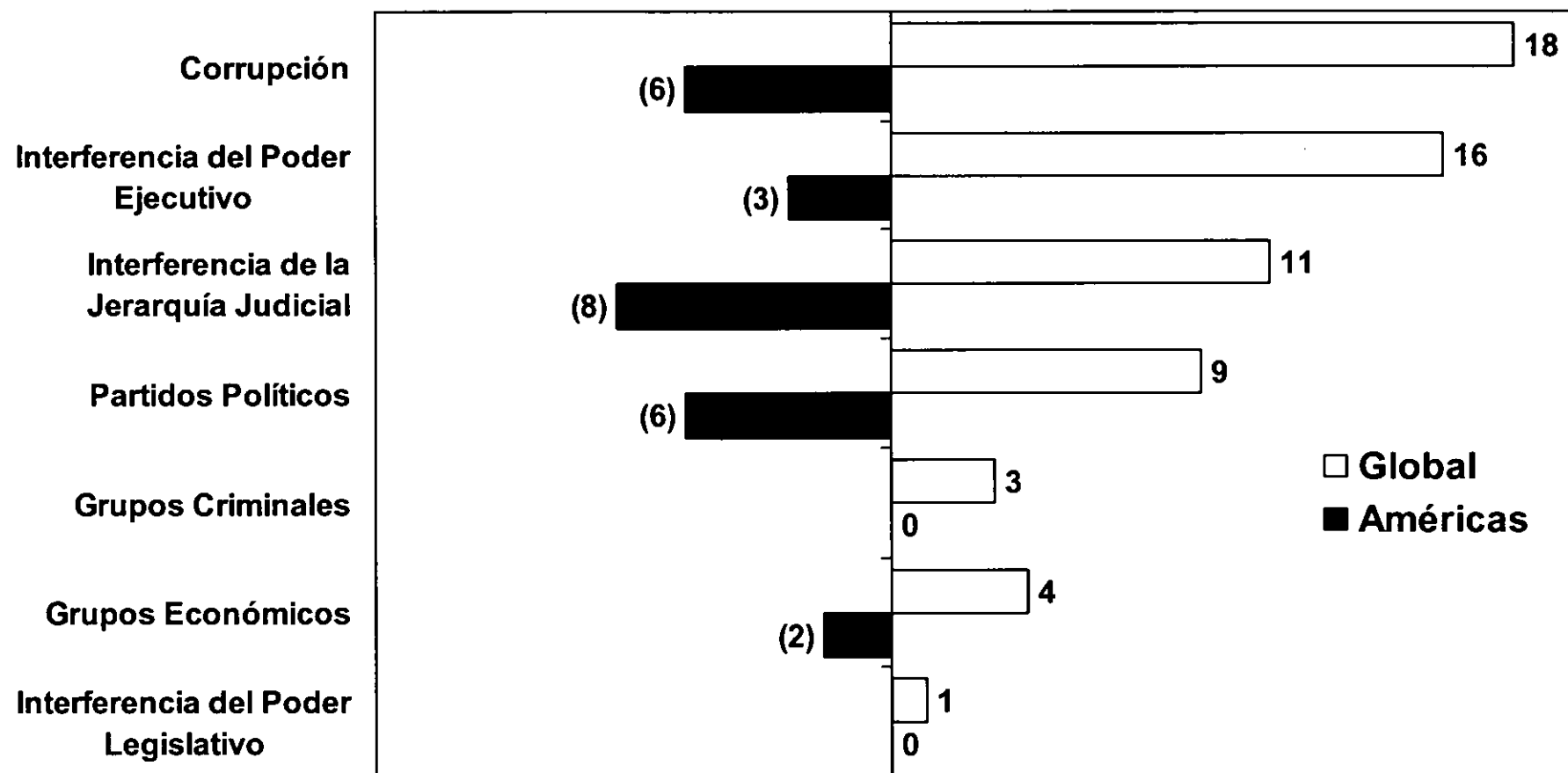
Ciudad de Lima, 30 de noviembre de 2001, realizada en el marco de la "Conferencia Internacional: Independencia Judicial: Perspectivas Internacional, Regional y Nacional" auspiciada por la Agencia para el Desarrollo Internacional de los Estados Unidos.

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Obstáculos a la Independencia Judicial*

(Análisis de los Estudios del 2000 - USAID/IFES)

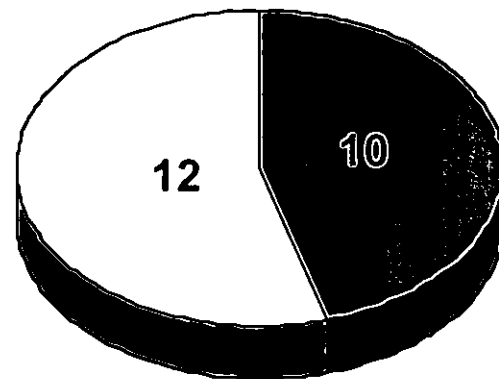


* En 14 países, los expertos han identificado otros obstáculos: temor judicial, recursos judiciales inadecuados, sociedad/tradición cultural, interferencia de los medios de comunicación, interferencia de los fiscales, interferencia de los abogados, interferencia de los particulares, interferencia burocrática, otros grupos de presión, amenazas contra la seguridad y la integridad física, salarios y falta de normas judiciales adecuadas.

Proceso de Selección y Retención de los Jueces

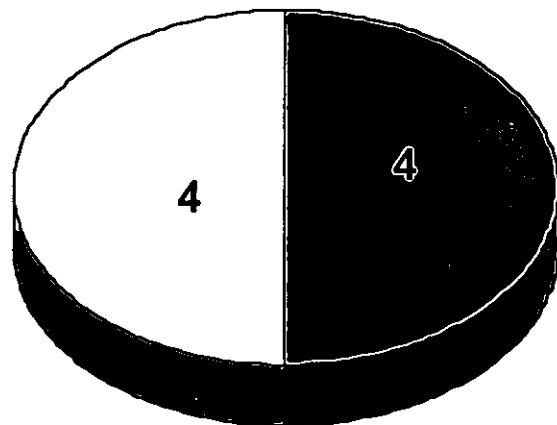
(Análisis de los Estudios del 2000 – USAID/IFES)

Global *



■ Objetivo/Bastante
Objetivo
□ Subjetivo/Bastante
Subjetivo

Américas*

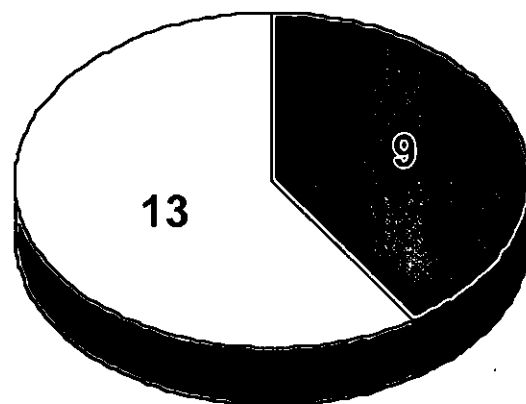


* N/A = Guatemala

Proceso de Ascenso de los Jueces

(Análisis de los Estudios del 2000 - USAID/IFES)

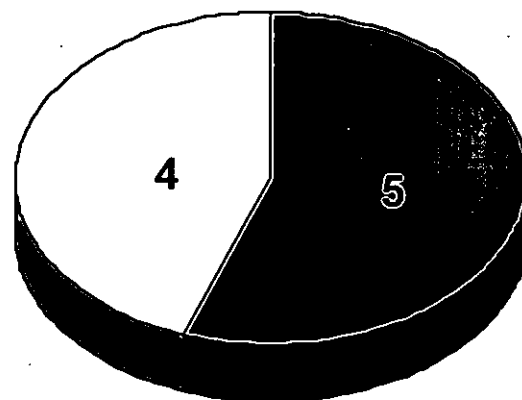
Global *



■ Objetivo/Bastante
Objetivo

□ Subjetivo/Bastante
Subjetivo

Américas

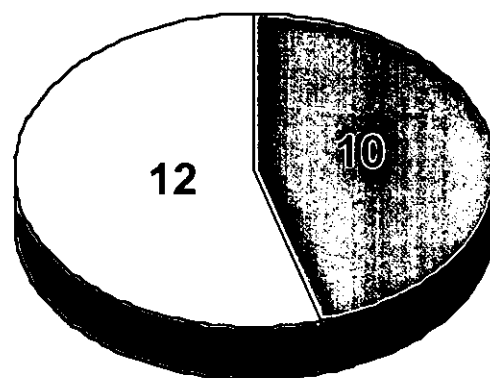


*N/A = 1

Proceso de Disciplina de los Jueces

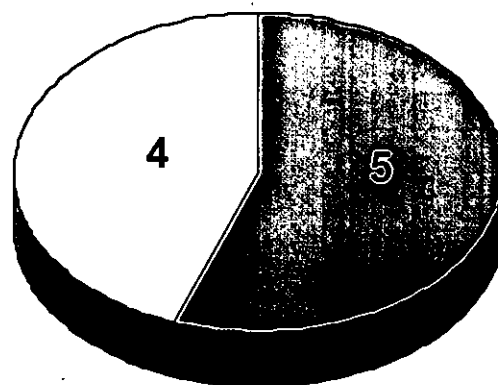
(Análisis de los Estudios del 2000 – USAID/IFES)

Global *



- Bien Definido/Bastante Bien Definido
- Mal Definido/Bastante Mal Definido

Américas

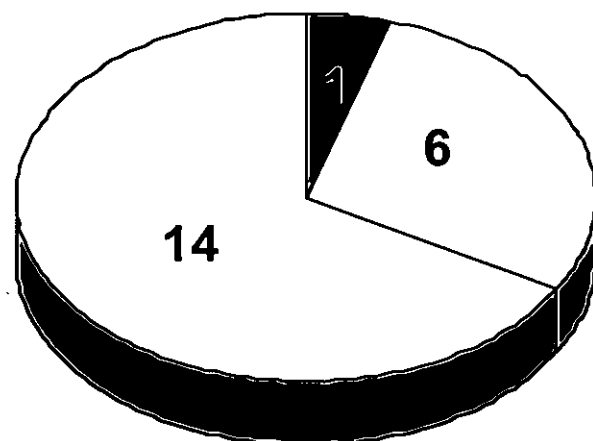


* N/A = 1

Evaluación del Desempeño de los Jueces

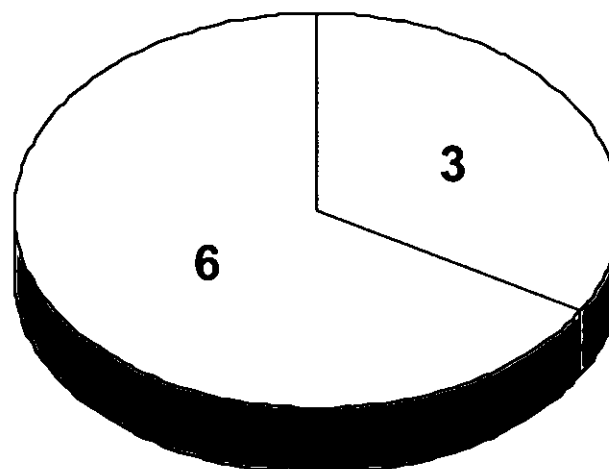
(Análisis de los Estudios del 2000 – USAID/IFES)

Global *



- ☒ Periódica - Efectiva
- ☐ Periódica - Inefectiva
- ☐ No Hay Evaluación Periódica

Américas **



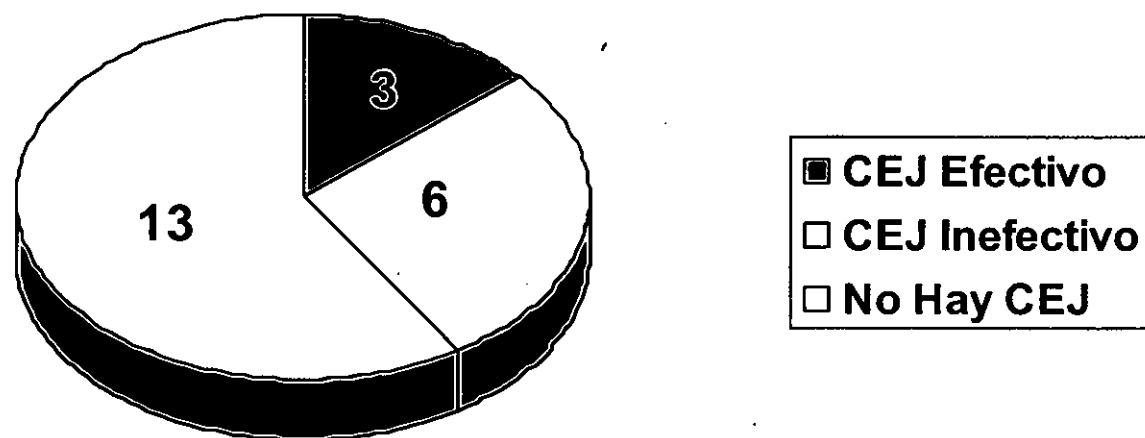
* N/A = 2

** Argentina, Chile, Costa Rica, República Dominicana, El Salvador, Guatemala, Honduras, Panamá, Paraguay

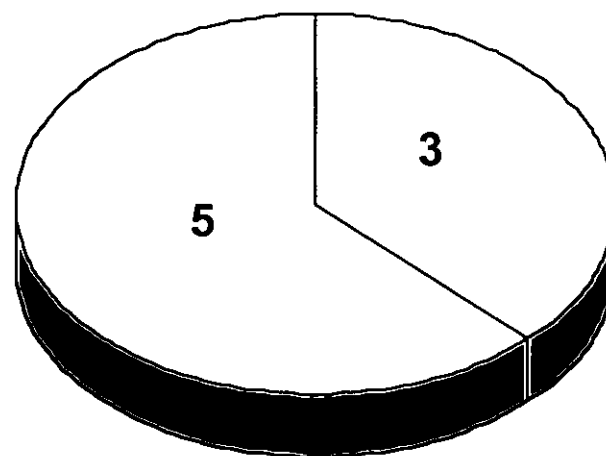
Código de Ética Judicial

(Análisis de los Estudios del 2000 – USAID/IFES)

Global *



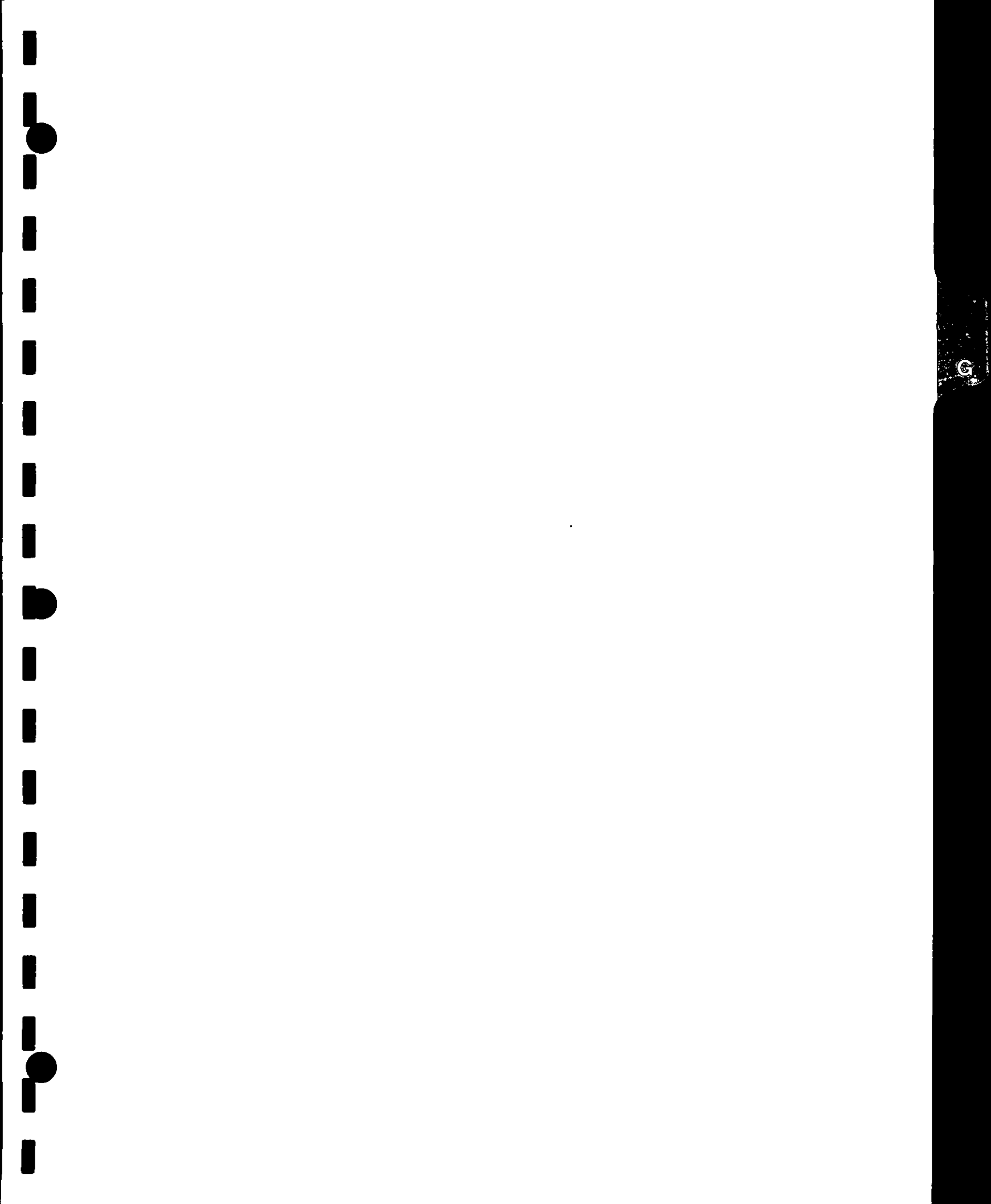
Américas **



* N/A = 1

** Argentina, Chile, Costa Rica, República Dominicana, Guatemala, Honduras, Panamá, Paraguay

N/A = El Salvador



Notes _____

El IDL por la refundación del Poder Judicial

Estamos convencidos de que es el momento de introducir cambios fundamentales en la administración de justicia en el Perú. Motivado por esta convicción, el IDL está impulsando espacios y actividades que permitan consolidar una alianza entre quienes en el "interior" del sistema judicial están por la "democratización de la justicia" y los sectores de la sociedad civil empeñados en lo mismo.

En las siguientes páginas damos cuenta de tres actividades realizadas en este marco por el IDL y otras instituciones en Lima, Chiclayo e Iquitos.

La independencia judicial como punto de agenda internacional

Cinco instituciones (Fundación Internacional para Sistemas Electorales, IFES, de los Estados Unidos; Fundación para el Debido Proceso Legal, DPLF, de los Estados Unidos; Centro de Estudios de Justicia de las Américas, CEJA, creado por la OEA y con sede en Santiago de Chile; Asociación de Jueces por la Justicia y la Democracia, del Perú; y el Instituto de Defensa Legal, con el apoyo de USAID), unieron sus esfuerzos para llevar a cabo la Conferencia Internacional "Inde-

pendencia Judicial, Perspectivas Internacional, Regional y Nacional", que contó con la participación de magistrados, autoridades, representantes de la cooperación internacional y expertos nacionales y extranjeros. La Conferencia tuvo como objetivos, por un lado, presentar la "Guía de Independencia Judicial" elaborada por IFES, extensa investigación de 26 países de todas las regiones del mundo y, por otro lado, reflexionar sobre la actual situación de la justicia en el Perú a partir de la Guía y de otras

experiencias latinoamericanas. El resultado fue la aprobación de la "Declaración de Lima", documento que se permite señalar algunos derroteros por donde podría discurrir un Poder Judicial más independiente, legitimado y de cara al país.

Declaración de Lima sobre independencia judicial

El gobierno de la ley exige un sistema de justicia independiente e imparcial. El valor de la igualdad —a cuya realización aspira una



sociedad democrática— encuentra en jueces independientes y provistos de condiciones objetivas de imparcialidad un camino imprescindible para su realización. Ese objetivo se ve, a veces, obstaculizado por una cultura corporativa puesta de espaldas a la ciudadanía y débil para oponerse a un sistema político que, en lugar de dar independencia a los jueces, crea las condiciones para subordinarlos. En vez de esa cultura cerrada y autorreferente, la experiencia muestra que jueces vinculados a la ciudadanía y abiertos a la sociedad civil poseen una base de legitimidad que favorece su independencia y su capacidad para controlar el poder. La independencia judicial es una aspiración y un esfuerzo de la ciudadanía que los jueces no deben dilapidar. Con miras a ese objetivo, parece necesario:

1. Crear las condiciones para una profesión judicial con sentido de independencia y consciente de la importancia de su función. Contribuirán a ello un sistema de selección basado en criterios objetivos que aseguren la idoneidad del juez; su lealtad irrestricta a la ley; y lo liberen de la subordinación a intereses políticos y económicos.
2. Fortalecer las bases de la legitimidad de los jueces. Para estos fines, es necesario asegurar la pluralidad en el debate al interior de la judicatura; acortar las distancias culturales y comunicativas entre los miembros de la judicatura y el común de la ciudadanía, acogiendo, en especial, la diversidad social y cultural; asegurar la publicidad en la realización de los juicios; y descentralizar la administración de

justicia, para así hacerla más cercana a las culturas locales.

3. Garantizar la independencia interna de los jueces. Para alcanzarla, será necesario separar el control de contenidos de las decisiones jurisdiccionales del control disciplinario; ejercer ese control disciplinario con respeto irrestricto del debido proceso legal; efectuar la evaluación del desempeño de los jueces con base en criterios impersonales medidos con indicadores objetivos; y no interferir con el ejercicio de los jueces de sus derechos ciudadanos, en especial los derechos de asociación y libre expresión.

4. Asegurar la adecuada asignación de recursos al sistema de justicia. Favorecerá el logro de este objetivo, dotar a los jueces de la capacidad necesaria para diseñar

su propio presupuesto, concibiéndolo como un instrumento de gestión con sentido estratégico orientado a hacer posible el gobierno de la ley; discutir en condiciones de igualdad con los otros sectores del Estado su asignación presupuestaria; prever una ejecución presupuestaria autónoma y descentralizada; e instituir sistemas de control *ex post* en los que, con base en indicadores, la ciudadanía y el poder público puedan evaluar el desempeño de los jueces.

Finalmente, hacemos votos para que en el Perú, país anfitrión de este encuentro, se persista en los esfuerzos por construir un Poder Judicial independiente e imparcial, provisto de las condiciones necesarias para evitar injerencias económicas y políticas que lesionan el gobierno de la ley. (David Lovatón)



Arriba: Jueza Antonia Saquicury. Abajo: Embajador James Michael, actualmente consultor de IFES.

Justicia y derechos humanos en el norte del país

En un país tan centralista, donde la mayoría de discusiones académicas se efectúan en Lima y desde Lima, la realización de eventos regionales es fundamental. Por eso, el día 30 de noviembre se realizó en la ciudad de Chiclayo un taller especializado sobre Justicia y Derechos Humanos, en el cual participaron magistrados, representantes de la Defensoría del Pueblo y ONG de los departamentos del norte del Perú. Este taller fue organizado por el IDL y también auspiciado por AID.

Se analizaron los nuevos fenóme-

nos que generan violaciones de los derechos humanos, como los que surgen a partir de las empresas mineras. Fue por ello importante escuchar el testimonio de la Vicaría de Solidaridad de Cajamarca, así como de una magistrada que ha denegado una acción de amparo a la Minera Yanacocha, impidiendo que afecte el agua que consume la ciudad.

Al hacerse evidentes la existencia de problemas comunes en la región (situación legal de las rondas campesinas, relaciones con el fuero militar, casos de

tortura) y la necesidad de seguir reuniéndose, generó gran interés la Red de Operadores Jurídicos de la Región Norte que ha permitido cohesionar a los abogados y magistrados con tendencias progresistas de Piura y Tumbes, organizar eventos académicos y proponer reformas legales. Varios participantes de Cajamarca y La Libertad plantearon la posibilidad de replicar iniciativas similares en sus respectivas sedes.

Este taller fue el prelude del Seminario Internacional sobre Justicia y Derechos Humanos

para la Región Norte, que coorganizamos por iniciativa de la Corte Superior de Lambayeque. Esta Corte Superior realiza con frecuencia eventos académicos en Chiclayo con profesores de diversas universidades de Lima y del norte; sin embargo, la posibilidad de analizar el propio sistema de administración de justicia y su relación con los derechos humanos causó especial interés, porque acudieron más de 200 personas, varios de ellos de otros departamentos, como los presidentes de las Cortes Superiores de Cajamarca y Amazonas.

Todos escucharon las exposiciones de Margaret Popkin, directora de la Fundación para el Debido Proceso Legal (DPLF) de los Estados Unidos; Luciana Sánchez, experta argentina del Centro de Estudios de Justicia de las Américas (CEJA); José Burneo, director de FEDEPAZ; Ronald Gamarra, procurador *ad hoc* en derechos humanos; Wilfredo Ardito y Carlos Rivera del IDL.

Iquitos: justicia e interculturalidad

En la ciudad de Iquitos la Corte Superior de Justicia de Loreto y el IDL llevaron a cabo la Conferencia "Derecho Consuetudinario y Administración de Justicia", a la que asistieron magistrados, abogados, funcionarios públicos y jueces de paz. Hay que tomar en cuenta que los nativos, por lo general, no acuden a las autoridades estatales, tanto por el problema de distancia como por las diferencias lingüísticas y culturales. En todo Loreto hay apenas 46 jueces de paz (en Cajamarca hay 427) y la mayoría son mestizos con serios prejuicios hacia los nativos.

Se analizaron algunas prácticas culturales, por las que los nativos son muchas veces detenidos, como las relaciones sexuales con menores de 14 años. Algunos magistrados aplican el artículo 15 del Código Penal, sobre el error culturalmente condicionado, pero otros consideran que si son personas que hablan castellano o han tenido algunos estudios, no puede afirmarse que ignoraban las consecuencias legales de su acción. En el otro extremo, algunos intelectuales plantean que el Poder Judicial prácticamente no debería intervenir en ningún caso en que la población nativa estuviera involucrada, pretendiendo una especie de inimputabilidad de los nativos sólo por el hecho de serlo. Se concluyó que es imposible establecer una norma general y que cada caso debe resolverse de forma concreta. (Wilfredo Ardito)



Durante muchos años los abogados de los organismos de derechos humanos visitamos Chiclayo para atender los casos de las personas inocentes detenidas en el penal de Picsi. Eran los tiempos de los jueces sin rostro y las condenas a cadena perpetua. Por eso es muy satisfactorio que en esa misma ciudad puedan ahora desarrollarse eventos sobre derechos humanos y administración de justicia, auspiciados por el Obispado y coorganizados por la Corte Superior. (Wilfredo Ardito)

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