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COMPREHENSIVE TRAINING OF JUDGES: A NEED IN THE ADMINISTRATION OF JUSTICE

(presented by Dr. Freddy Castillo Castellanos)

In our previous report, we included some type of guiding principles which mentioned the need to have judges receive comprehensive training. We then put it this way:

Society and the State should be permanently concerned over the legal and ethical training of judges. We know that Law Schools are basically focused on training litigation lawyers and that judicial study programs only include occasional courses given by the Judiciary. **A comprehensive judicial training system should be created since pre-graduate years.** (CJI/doc.336/09)

Before referring to this aspect which, I believe, is of utmost importance to deal with the topic of access to justice, I would like to stress the convenience of having the Juridical Committee strengthen its ties with organizations like the Peruvian Legal Defense Institute (IDL for its acronym in Spanish) and the Due Process of Law Foundation (DPLF), which are working on different aspects of this topic, as well as on a draft Declaration on Access to Justice in the Americas. Thanks to these ties, we are more familiar with the progress being made by our countries, mainly with regard to alternative means of delivering justice. We can see that an increasingly larger percentage of lawsuits could be resolved through conciliation or friendly mechanisms, which would help reduce the workload of courts and other auxiliary entities engaged in the administration of justice. The excessive judicialization of conflicts is making the administration of justice bear an enormous weight. That's why the search for alternative mechanisms is one of the best options available to make good progress on this topic.

Judges, law and justice

In view that most judges graduate from Law Schools the study programs of which focus on the profile of litigation lawyers, in resolving judicial matters our judges apply strictly legal criteria. As we know, "administering justice" is nothing else but enforcing compliance with the law. A challenging exercise of intelligence often obliges judges to find a balance between the sense of justice and the legal rules which are not always fair and foreseeable. But this desiderative which is ideally required is not always fulfilled in a system where justice is mechanically administered by judges, who take better care of the fulfillment of procedural steps than of the administration of justice itself. Spanish writer Alejandro Nieto, in his controversial book entitled "Balada de la Justicia y la Ley" (Trotta Pub. House, Madrid, 2002), used to tell us: "The professional training of the judge tends to be perverse since it focuses on a scrupulous and inflexible respect for procedural steps, which seems to be the quintessence of judicial activity. The so-called procedural guarantees have become a fetish of the official democratic juridical ideology". With judges limited to the application of rules of procedure out of habit, we cannot exactly speak of access to justice in the non-functional sense of this term.

Indeed, this reality is not exactly the same in all our countries, but we are aware that in a large part of them there are deficiencies in the comprehensive training of judges, as well in their selection and independence. These issues must be addressed simultaneously with the previous one, since it will be useless if we improve the qualifications of the candidates to the judicature but do not guarantee that they will be accepted due to the prevalence of more political rather than professional selection criteria. As we may see, this is a complex reality that must be addressed with a consistent group of measures and not with isolated and partial solutions.

The existence of numerous material that serves to diagnose the issue and give an account of the progress made does not relieve us from permanently updating said material. To this end, a rigorous review of two basic aspects that could result in an intellectual and practical contribution for our countries, without prejudice to other aspects that must be necessarily addressed by the rapporteur, is proposed:

1. Training profile of the judges
2. Functional independence of judges and courts, professional independence of the judge and independence of the Judiciary.

Apart from analyzing the current status of these two aspects, through a significant sample from our countries, guiding principles will be prepared as a contribution from the Inter-American Juridical Committee to a topic that is essential for the strengthening of democracy in the Americas.